

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE ex rel. TYRONE GILBERT,	:	PER CURIAM OPINION
Petitioner,	:	
- vs -	:	CASE NO. 2011-A-0060
RICHARD GANSHEIMER, WARDEN,	:	
Respondent.	:	

Original Action for Writ of Habeas Corpus.

Judgment: Petition dismissed.

Tyrone Gilbert, pro se, PID: 521-351, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030-8000 (Petitioner).

Mike DeWine, Ohio Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215; and *Gene D. Park*, Assistant Attorney General, 150 East Gay Street, 16th Floor, Columbus, OH 43215 (For Respondent).

PER CURIAM.

{¶1} Tyrone Gilbert petitions this court for a writ of habeas corpus, pursuant to R.C. 2725 and Article IV, §3(B)(1) of the Ohio Constitution, arguing that he was entitled to release from incarceration on September 9, 2011. Mr. Gilbert argues that the Ohio Department of Rehabilitation and Correction (“ODRC”), and specifically the Bureau of Sentence Computation (“BOSC”), has incorrectly calculated his maximum sentence to be six years instead of five, making his release date September 9, 2012. Mr. Gilbert

seeks a writ of habeas corpus because he contends that he is being unlawfully restrained in violation of both the Ohio and United States Constitutions. We find that Mr. Gilbert's petition lacks merit and therefore deny the writ of habeas corpus.

{¶2} Substantive Facts and Procedural History

{¶3} In December of 2006, Mr. Gilbert faced a number of charges in two separate cases pending before the Cuyahoga Court of Common Pleas. On December 19, 2006, he pled guilty to count two (drug trafficking) and count six (failure to comply with the order of a police officer) in case number CR-06-486679-A ("Case One"), and count one (having a weapon under a disability) and count two (drug possession with a firearm specification) in case number CR-06-488238-A ("Case Two").

{¶4} In Case One, the trial court sentenced Mr. Gilbert to three years on count two and two years on count six, to run consecutively for a total of five years.

{¶5} In Case Two, the trial court sentenced Mr. Gilbert to three years on count one, six months on count two, and one year for the firearm specification. The one-year firearm specification was to run consecutively to the six months for the underlying offense, but the two counts were to run concurrently to one another, for a total of three years.

{¶6} The court then ordered both cases to run concurrently to one another. Mr. Gilbert was given 99 days of jail time credit.

{¶7} Mr. Gilbert began serving his sentence on January 12, 2007, and received an inmate sentencing packet on January 16, 2007. This packet indicated that Mr. Gilbert was to serve one year on the gun specification prior to his definite term sentence of five years (for a total of six years), and that his sentence would end on September 9,

2012. Mr. Gilbert wrote to BOSC challenging the imposition of a six-year sentence, arguing that, pursuant to the trial court's sentencing entries, he was only to serve five years. BOSC responded to Mr. Gilbert on June 12, 2008, indicating that "[g]un specifications can run consecutive to any offense. Your controlling case is the 5 years with 1 year gun." BOSC went on to suggest that Mr. Gilbert write his judge for a corrected entry if he felt their interpretation of his sentence was not correct, stating that "[w]e can not change sentences unless ordered by the judge in a certified journal entry." He never did so.

{¶8} On September 16, 2011, Mr. Gilbert filed this petition for a writ of habeas corpus, contending that his maximum sentence had expired on September 9, 2011. In response, this court issued an alternative writ on September 22, 2011, ordering respondent, Warden Gansheimer, to file an answer or a motion to dismiss within 14 days. Respondent, Warden Gansheimer, submitted a motion to dismiss belatedly on October 7, 2011. He advanced no arguments and submitted no conclusions upon which this court had not already settled.

{¶9} Mr. Gilbert's Petition Lacks Merit

{¶10} We base our decision on the materials provided by Mr. Gilbert with his petition and established law. Those materials include: a brief in support; the trial court's journal entries in case numbers CR-06-486679-A and CR-06-488238-A; an excerpt from the transcript of the sentencing proceedings; a portion of Mr. Gilbert's inmate sentencing packet indicating ODRC's calculation of his sentence; the letter from Mr. Gilbert to BOSC challenging the calculation of his sentence at six years; and BOSC's response to Mr. Gilbert.

{¶11} The law related to gun specifications and sentencing is very clear. R.C. 2929.14(C)(1)(a) states that “if a mandatory prison term is imposed upon an offender *** for having a firearm on or about the offender’s person or under the offender’s control while committing a felony *** the offender shall serve any mandatory prison term imposed *** consecutively to and prior to any prison term imposed for the underlying felony ***, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.”

{¶12} Accordingly, Mr. Gilbert was required to serve the one-year sentence on the gun specification prior to serving any time for the underlying felonies in either case. See *State v. Owens*, 5th Dist. No. 09CA128, 2010-Ohio-6004, ¶13 (holding that appellant was “statutorily required to serve the 3 year term on the firearm specification in [Case No. 1] consecutively to the sentences for the felony convictions in [Case Nos. 1 and 2], which were ordered to run concurrently.”) Although the court ordered Mr. Gilbert’s two cases to run concurrently for a total of five years, the one-year firearm specification was required, statutorily, to run prior to those five years. Therefore, Mr. Gilbert’s total time of incarceration is six years; BOSC and ODRC have correctly computed Mr. Gilbert’s sentence and his release date of September 9, 2012 stands.

{¶13} Consistent with the foregoing discussion, it is the sua sponte order of this court that Mr. Gilbert’s habeas corpus petition, as filed on September 16, 2011, is hereby dismissed in its entirety.

CYNTHIA WESTCOTT RICE, J., MARY JANE TRAPP, J., THOMAS R. WRIGHT, J.,
concur.