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FEB 15 2007

Circuit Court
Lane County, Oregon

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR LANE COUNTY

GREG MICHAEL REYNOLDS

Plaintiff,

Case No. 16-07-01781

v.

THE STATE OF OREGON

Defendant.

**GENERAL JUDGMENT OF
DISMISSAL (without prejudice)**

THIS MATTER is before the Court on Plaintiff's Petition for Writ of Habeas Corpus, ORS 34.310 et seq, filed *pro se*. The Court, having reviewed the Petition and multiple exhibits, concludes that the Petition is, on its face, without merit. Accordingly, the Court exercises its statutory authority to dismiss the Petition on its own motion. ORS 34.370 (7).

Because the Court finds that the petition for the writ is meritless, the court does not amend the caption in an effort to name the correct defendant.

Based upon allegations set forth in the Petition, attached exhibits and a review of the underlying case, the Court finds that:

Defendant was indicted and charged with three Class A felonies (Unlawful Delivery of a Controlled Substance to a Minor), on December 17, 1993. When he was arraigned, on January 10, 1994, defendant requested a court-appointed attorney. That request was denied by court order dated January 13, 1994. On February 14, 1994, appearing with and represented by counsel, defendant withdrew his Not Guilty plea and entered a Guilty plea to count 1 of the indictment and was given a 36-month probationary sentence, along with a 20-day road crew sentence. Counts 2 and 3 were dismissed. Probation was terminated early for satisfactory conformance on September 9, 1996.

The writ is available in two kinds of cases: "(1) When a petition makes allegations which, if true, show that the prisoner, though validly in custody, is subjected to a further 'imprisonment or restraint' of his person that would be unlawful if not justified to the court, and (2) when a petition alleged other deprivations of a prisoner's legal rights of a kind which, if true, would require immediate judicial scrutiny, if it also appears to the court that no other timely remedy is available to the prisoner." *Penrod/Brown v. Cupp*, 283 Or 21, 28, 581 P2d 934 (1978).

Defendant does not allege that he is presently incarcerated. Defendant claims restraint of liberty in that he bears a conviction for a Class A felony. He has sought and been denied pardons, and has otherwise been unsuccessful in setting aside this conviction. Defendant's primary complaint is not that he did not have an attorney but that he was denied a court-appointed attorney. He also raises constitutional issues concerning the police contact which lead to his charges. To the extent that defendant seeks to challenge the lawfulness of his criminal conviction in that case, those issues are not properly raised in a habeas corpus proceeding at this time. *See Mora v. Maass*, 120 Or App 173, 176 (1993), *affirmed without opinion by an equally divided court*, 319 Or 570 (1994).

Viewing the facts and the pleadings in the light most favorable to the defendant, the Court finds that his petition for a writ of habeas corpus is, on its face, without merit as it does not meet the minimum basis to invoke habeas corpus jurisdiction. The Court has authority to dismiss meritless petitions on its own motion and finds that it is appropriate, for the reasons set forth above, to do so in this case. ORS 34.370(7)

IT IS THEREFORE ORDERED AND ADJUDGED that the petition is dismissed without prejudice.

DATED this 5th day of February, 2007

/s/ Eveleen Henry

Eveleen Henry, Circuit Court Judge.