VIRGINIA:

IN THE STAFFORD COUNTY CIRCUIT COURT

E.C.,

Petitioner,

v. Case No. CL09000982-00

VIRGINIA DEPARTMENT OF JUVENILE JUSTICE,

Respondent.

FINAL ORDER

This cause came on to be heard on the 28th day of October, 2010, upon the petitioner's Petition for a Writ of Habeas Corpus, the respondent's Motion to Dismiss, the petitioner's Memorandum in Opposition to the Motion to Dismiss, the respondent's Response to the Memorandum in Opposition, and the Petitioner's Surreply thereto, and was argued by counsel *ore tenus*. By agreement of counsel, oral argument was limited to the questions of whether this Court has jurisdiction to entertain the case, and whether the case is moot. Upon mature consideration of the pleadings and the authorities cited therein, the oral argument of counsel, as well as a review of the record, pursuant to Code § 8.01-654(B)(5) and Rule 3A:24, the

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Court finds the petitioner is not entitled to the relief sought. The Court makes the following findings of fact and conclusions of law:

Procedural History

Upon his guilty pleas, the Juvenile and Domestic Relations Court of Stafford County (hereinafter "Juvenile Court") on August 22, 2007, adjudicated the petitioner, E.C., then a sixteen-year-old juvenile, guilty of rape, and breaking and entering.[1] The petitioner had been charged with committing those offenses on June 4, 2007, in petitions dated June 7, 2007.

At the adjudicatory hearing on August 22, 2007, pursuant to a plea agreement, the Commonwealth agreed to nolle prosequi a charge of felony abduction and agreed to waive transfer of the case to the Circuit Court to try the petitioner as an adult, which transfer the Commonwealth had earlier requested by motion filed on June 18, 2007. The Juvenile Court held that the facts were sufficient to make a finding of guilt for commission of rape and breaking and entering.

At the disposition hearing held on September 19, 2007, the Juvenile Court committed the petitioner to the Department of Juvenile Justice (hereinafter "DJJ"), ordered him to enroll in and complete a sex offender

[1] The petitioner turned sixteen on June 23, 2007.

course at DJJ, and ordered him to register as a sex offender. The Juvenile Court set a review hearing date for November 19, 2007.

The petitioner did not appeal.

On November 19, 2007, the Juvenile Court reaffirmed the defendant's commitment to the DJJ for an indeterminate time.

After spending approximately seventeen months in DJJ custody, the petitioner was paroled on February 25, 2009, to the supervision of 16th District Juvenile and Domestic Relations Court Service Unit of Orange County, the jurisdiction where petitioner resided with his parents. On August 18, 2009, the petition for a writ of habeas corpus currently before the Court was filed.

On August 24, 2009, the petitioner was released from parole supervision and discharged from parole by the 16th District Juvenile and Domestic Relations Court Service Unit. The petitioner, therefore, is not under any form of detention or confinement pursuant to the challenged convictions.

Present Petition

As outlined in parts I through V of the "Grounds for the Petition" section of the habeas petition filed herein, petitioner alleges the following as the grounds that render his detention illegal:

I. Petitioner did not have adequate notice of the elements of the offenses to which he pled guilty.

II. Trial counsel provided constitutionally ineffective assistance of counsel, in that:

A. Counsel failed to conduct an adequate investigation.

1. Failed to conduct an objectively reasonable investigation of whether the sexual encounter was consensual.

i. Counsel failed to effectively interview her client.

ii. Counsel failed to interview petitioner's brother Jamal Dulaney, an eyewitness.

iii. Counsel failed to interview school officials with knowledge of the victim's history of making false accusations and other past problems.

iv. Counsel failed to interview other persons with knowledge of the victim's bad reputation for veracity.

v. Counsel failed to interview any of the investigating officers.

vi. Counsel failed to investigate any other potential witnesses: specifically, petitioner's mother, father, brother, sister, teacher, an expert clinical psychologist, assistant principal, coach and a friend.

2. Counsel failed to conduct an objectively reasonable investigation of the Commonwealth's mental incapacity theory.

B. Counsel procedurally defaulted the petitioner's motion to withdraw his guilty plea.

C. Counsel failed to object to the fatal variance (between the charge set out in the petition, rape by force, and that adopted later, mental incapacity.)

D. Counsel failed to object to the Commonwealth's request that petitioner be required to register as a sex offender.

III. The petitioner did not receive adequate notice of the constitutional rights he waived by entering a guilty plea.

IV. The petitioner did not have adequate notice of the direct consequences of his guilty plea.

V. The petitioner is actually innocent of the crimes for which he was convicted.

Findings

Jurisdiction

This proceeding is controlled by the Virginia habeas corpus statute, Code § 8.01-654, et. seq. This Code section provides that relief may be granted upon a showing by the petitioner "that he is detained without lawful authority," Code § 8.01-654(A)(1), and refers to "a petitioner held under criminal process," Code § 8.01-654(B)(1). The statute provides that a petitioner may "allege detention without lawful authority" based upon a suspended sentence, or a sentence to be served subsequently, Code § 8.01-654(B)(3). Virginia case law is abundantly clear that courts have no jurisdiction to consider a writ of habeas corpus absent detention. In Carroll v. Johnson, 278 Va. 683, 693, 685 S.E.2d 647, 652 (2009), the Supreme Court of Virginia stated that

> Code § 8.01-654(A)(1) allows a petitioner to challenge the lawfulness of the entire duration of his or her detention so long as

> an order entered in the petitioner's favor will result in a court order that, on its face and standing alone, will directly impact the duration of the petitioner's confinement.

Id. at 693, 685 S.E.2d at 652.

The petitioner is not detained and this Court is consequently without jurisdiction in this matter. As noted above, the petitioner was released from parole supervision and discharged from parole on August 24, 2009. Thus, the petitioner is not incarcerated and is under no form of detention pursuant to the challenged convictions. The Court specifically finds that the requirement for sex offender registration in not the functional equivalent of detention, confinement, or custody, or the contigent exposure to confinement inherent in parole or a suspended sentence. This civil sex offender registration requirement does not equate to incarceration, and has been held "not penal" in nature, but "solely remedial." Kitze v. Commonwealth, 23 Va. App. 213, 217, 475 S.E.2d 830, 832 (1996) (decided under predecessor statute § 19.2-298.1); see McCabe v. Commonwealth, 274 Va. 558, 567, 659 S.E.2d 508, 512 (2007) (referring to the current sex offender registration requirements as a "civil registration scheme" similar to those in other states.).

An order in the petitioner's favor in this matter clearly could not "directly impact the duration of [his] confinement," as he is not confined, and

both his detention and his parole on the offenses have been completed. In view of the fact that the petitioner is not under detention within the intendment of Code § 8.01-654, this Court is without jurisdiction to consider his writ of habeas corpus, and his petition is denied and dismissed.

Mootness

Alternatively, the petition is dismissed as moot. The only relief available to a petitioner under the Virginia habeas corpus statute is the entry of an order that will, in itself, favorably affect the duration of his confinement. Because the petitioner is under no form of confinement or detention, that remedy is unavailable. It is not the office of courts to give opinions and decide questions where no relief can be afforded. VSP v. Elliot, 48 Va. App. 551, 554, 633 S.E.2d 203, 204 (2006). Accordingly, even if jurisdiction had existed, this Court has no capacity to grant the relief contemplated by the statute.

This Court finds that petitioner's allegations can be disposed of on the basis of the record, pleadings, and oral argument in this Court, and that no plenary hearing is necessary. Friedline v. Commonwealth, 265 Va. 273, 277, 576 S.E.2d 491, 493 (2003); Arey v. Peyton, 209 Va. 370, 164 S.E.2d 691 (1968); Code § 8.01-654(B)(4).

It is therefore **ADJUDGED** and **ORDERED** that the petition for a writ of habeas corpus herein be denied and dismissed.

The clerk is directed to forward a certified copy of this Order to Jeremy S. Byrum, Esquire, counsel for the petitioner and to and to Gregory W. Franklin, Assistant Attorney General.

Entered this 18th day of December, 2010.

Judge

I ask for this:

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Seen and objected to for the reasons set forth on the record in the hearing held on October 28, 2010 and for the reasons set forth in the Petition for Writ of Habeas Corpus Subject to Amendment (dated August 18, 2009), the Memorandum In Opposition to Respondent's Motion to Dismiss (dated January 15, 2010), and the Surreply In Opposition to Respondent's Motion to Dismiss (dated May 13, 2010).

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