

STATE OF MICHIGAN
COURT OF APPEALS

FRANK MORGAN,

Plaintiff-Appellant,

v

THUMB CORRECTIONAL FACILITY
WARDEN,

Defendant-Appellee.

UNPUBLISHED
December 23, 2014

No. 319221
Lapeer Circuit Court
LC No. 13-046673-AH

Before: DONOFRIO, P.J., and FORT HOOD and SHAPIRO, JJ.

PER CURIAM.

Plaintiff Frank Morgan appeals as of right from the trial court’s denial of his habeas corpus petition, which sought to set aside the life sentence he received following his 1974 second-degree murder conviction. We affirm.

Plaintiff was originally charged with first degree murder and pleaded guilty to second degree murder over the prosecutor’s objection. He was sentenced to life in prison. On appeal, the Supreme Court set aside the second-degree murder conviction and remanded for trial on the first-degree murder charge. *People v Morgan*, 391 Mich 791; 216 NW2d 50 (1974). The prosecutor thereafter agreed to the reduced plea and plaintiff again pleaded guilty to second-degree murder. At the time of this plea, the trial court stated that if plaintiff wanted “a new presentence report,” the court would “order one.” In seeking habeas corpus relief, plaintiff alleges that the trial court failed to obtain an updated presentence report even though its preparation “was part of the plea bargain.”

The trial court properly denied plaintiff’s writ for habeas corpus. We begin by noting that Morgan did appeal his sentence but did not argue that he had been wrongfully denied an updated presentence report. *People v Morgan*, 63 Mich App 686; 235 NW2d 154 (1975).

“The function of a writ of habeas corpus is to test the legality of the detention of any person restrained of his liberty.” *Triplett v Deputy Warden*, 142 Mich App 774, 780; 371 NW2d 862 (1985); see also *Moses v Dep’t of Corrections*, 274 Mich App 481, 485; 736 NW2d 269 (2007), citing *Phillips v Warden, State Prison of Southern Michigan*, 153 Mich App 557, 565; 396 NW2d 482 (1986). As stated in *Moses*, 274 Mich App at 485-486:

In general, MCL 600.4310(3) prohibits habeas corpus relief to “[p]ersons convicted, or in execution, upon legal process, civil or criminal.” But relief “is open to a convicted person in one narrow instance, . . . where the convicting court was without jurisdiction to try the defendant for the crime in question.” *People v Price*, 23 Mich App 663, 669-670, 179 NW2d 177 (1970). Moreover, to qualify for habeas corpus relief, the jurisdictional defect must be radical, rendering the conviction absolutely void. *Id.* at 670. “A radical defect in jurisdiction contemplates . . . an act or omission by state authorities that clearly contravenes an express legal requirement in existence at the time of the act or omission.” *Id.* at 671. Nevertheless, habeas relief may be denied in the exercise of a court’s discretion where full relief may be obtained in other more appropriate proceedings. . . . Thus, while plaintiff may not use a habeas proceeding as a substitute for an appeal or to review the merits of his criminal conviction, plaintiff may assert a radical defect in the jurisdiction of the court in which his conviction was obtained.

We reject plaintiff’s contention that the sentencing court failed to obtain an updated presentence report before sentencing and that such a failure constituted a “radical defect” sufficient to deny that court of jurisdiction. First, a review of the lower court record establishes that a presentence report was obtained following his original plea and that the court was well-informed of the relevant sentencing information. In addition, the lower court record demonstrates that plaintiff refused to cooperate with the probation department’s attempt to update the report. A memorandum from the probation officer dated May 20, 1974 stated that he had “appeared in the County Jail on the 14th of May to interview” plaintiff, but was “told by [plaintiff] that he wanted nothing whatsoever to do with anybody from the Probation Department or [the judge’s] courtroom. He refused to talk to us, stating that anything we wanted from him we already had and we could go to hell.” The memorandum went on to state that the “previous presentence report dated January 30, 1973,” along with “a copy of the write-up” and a “copy of the up-to-date police record” were “[a]ttached to” the memorandum. Thus, the original presentence report was updated. Even if it had not been, the court’s statement to plaintiff that an updated presentence report would be prepared before the second sentencing was not a condition of his plea and certainly does not rise to the level of a “radical defect.”

In sum, plaintiff has failed to establish any error in the sentencing process, let alone one that constitutes a “radical defect” in the criminal court’s jurisdiction that would render habeas corpus relief appropriate or require us to conclude that his due process rights were violated.

Affirmed.

/s/ Pat M. Donofrio
/s/ Karen Fort Hood
/s/ Douglas B. Shapiro