

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1301-2011  
vs. :  
:   
MICHAEL WILLITS, :   
Defendant : **Petition for Writ of Habeas Corpus**

**OPINION AND ORDER**

Before the Court is a Petition for Writ of Habeas Corpus filed on behalf of the Defendant on January 25, 2012.

By Information filed on October 13, 2011, Defendant is charged with one count of Burglary, a felony 1, one count of Criminal Trespass, a felony 2, a count of Theft by Unlawful Taking and Receiving Stolen Property, both misdemeanor 1's and a count of Criminal Mischief, a misdemeanor 3.

By Order of Court dated December 21, 2011, the Court addressed Defendant's outstanding claims for discovery. The Court specifically noted that if Defendant requested additional discovery, the Omnibus Pretrial Motion would not need to be filed until further Order of Court.

Defendant did, in fact, request an item of discovery following the December 21, 2011 Order. The item, a CD, was provided to Defendant on January 20, 2012. Despite no Order of Court being filed, Defendant chose to file his Petition for Writ of Habeas Corpus on January 25, 2012.

In the Petition, Defendant alleges only that the evidence presented at the preliminary hearing is "not sufficient to establish the charges of brought against him" (sic) (Petition, Paragraph 3).

A hearing and argument was held in this matter on February 7, 2012. At the hearing, defense counsel represented that she wanted the Court to consider the Petition based on the transcript of the preliminary hearing. In looking through Defendant's file, however, defense counsel conceded that no transcript had been prepared and that she would need

additional time to have the transcript prepared.

The Commonwealth objected to giving defense counsel any additional time arguing that there was more than sufficient time to have the transcript prepared in that the preliminary hearing took place on September 19, 2011 and Mr. William Miele of the Public Defender's office entered his appearance on behalf of the Defendant on October 25, 2011. Moreover, the Commonwealth made an oral Motion to dismiss the Petition for Habeas Corpus in that it did not specifically allege facts which would entitle the Defendant to the requested relief.

The proper means to attack the sufficiency of the Commonwealth's evidence pretrial is through the filing of a Writ of Habeas Corpus. Commonwealth v. Marti, 779 A.2d 1177, 1178 n.1 (Pa. Super. 2001). At a habeas corpus hearing, the issue is whether the Commonwealth has presented sufficient evidence to prove a prima facie case against the Defendant. Commonwealth v. Williams, 911 A.2d 548 (Pa. Super. 2006).

"A prima facie case consists of evidence, read in a light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime." Commonwealth v. Packard, 767 A.2d 1068, 1070 (Pa. Super. 2001). "Stated another way, a prima facie case in support of an accused's guilt consists of evidence that, if accepted as true, would warrant submission of the case to the jury." Packard, supra. at 1071.

A Petition for Habeas Corpus, however, must specifically allege facts, which if true, would entitle the Defendant to an award of such a Writ. Commonwealth v. Lawson, 650 A.2d 876, 879 (Pa. Super. 1994). The purpose of a Habeas Corpus proceeding is not merely to review the prior preliminary hearing but rather to determine the legality of the existing restraint on the defendant's liberty. Lawson, supra. citing Commonwealth v. Morman, 541

A.2d 356 (Pa. Super. 1988).

Because Defendant's Petition has not alleged any facts which would entitle the Petitioner to relief, instead opting to make a legal averment that the evidence is insufficient, the Commonwealth's oral Motion has merit and Defendant's Petition for Writ of Habeas Corpus shall be dismissed.

Under the circumstances, Defendant is not entitled to a hearing. It would be manifestly prejudicial to the Commonwealth to require it to prepare for a hearing and to be in a position to present additional evidence without knowing even one fact upon which the Defendant claims relief.

**ORDER**

**AND NOW**, this \_\_\_\_ day of February 2012, following a hearing, Defendant's Petition for Habeas Corpus Relief is **DENIED**.

By The Court,

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Marc F. Lovecchio, Judge

cc: PD (WM)  
DA (EL)  
Gary Weber, Esquire (Lycoming Reporter)  
Work File

MFL/bsl