

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

JOHN M. GEORGIUS,	:	PER CURIAM OPINION
Petitioner,	:	
- vs -	:	CASE NO. 2018-T-0091
SHERIFF PAUL MONROE,	:	
Respondent.	:	

Original Action for a Writ of Habeas Corpus.

Judgment: Petition dismissed.

John M. Georgius, pro se, Trumbull County Jail, 150 High Street, N.W., Warren, OH 44481 (Petitioner).

Dennis Watkins, Trumbull County Prosecutor, and *Ashleigh Musick*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Respondent).

PER CURIAM.

{¶1} Petitioner, John M. Georgius, petitions this court for a writ of habeas corpus, directed to respondent, Paul Monroe, Sheriff of Trumbull County. Mr. Georgius contends he is being deprived of his liberty by respondent. Respondent has moved to dismiss. We grant the motion to dismiss.

{¶2} Mr. Georgius was charged with two felony drug possession charges, and two misdemeanor charges. He waived his preliminary hearing, and the matter was sent

to the Trumbull County Grand Jury, which returned a no bill on the felony possession charges, but no determination on the misdemeanors. Relator filed his petition October 18, 2018. The state had moved to nolle prosequi the misdemeanor charges. The affidavit of Major Daniel J. Mason, attached to the motion to dismiss, establishes relator was released from custody October 19, 2018.

{¶3} In *Norman v. Bracy*, 11th Dist. Trumbull No. 2018-T-0031, 2018-Ohio-2583, ¶4, this court recently stated:

{¶4} “A motion to dismiss for failure to state a claim on which relief can be granted is procedural in nature and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Comm’rs.*, 65 Ohio St.3d 545, 548 (1992). ‘(W)hen a party files a motion to dismiss for failure to state a claim, all the factual allegations of the complaint must be taken as true and all reasonable inferences must be drawn in favor of the non-moving party.’ *Byrd v. Faber*, 57 Ohio St.3d 56, 60 (1991). In resolving a Civ.R. 12(B)(6) motion, courts are confined to the allegations in the complaint and cannot consider outside materials. *State ex rel. Baran v. Fuerst*, 55 Ohio St.3d 94 (1990). However, “‘(m)aterial incorporated in a complaint may be considered part of the complaint for purposes of determining a Civ.R. 12(B)(6) motion to dismiss.’” *Adlaka v. Giannini*, 7th Dist. Mahoning No. 05 MA 105, 2006-Ohio-4611, ¶34, quoting *State ex rel. Crabtree v. Franklin Cty. Bd. of Health*, 77 Ohio St.3d 247, 249, fn. 1. (1997). In order for a court to grant a motion to dismiss for failure to state a claim, it must appear “‘beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’” *O’Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245 (1975), quoting *Conley v. Gibson*, 355 U.S. 41, 45 (1957). As long as there is a set of facts

consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss. *Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 418 (2002)."

{¶5} Habeas relief is only available when a person is being improperly restrained of his or her liberty. Petitioner is not. He can prove no set of facts supporting his petition. *Norman* at ¶7.

{¶6} The motion to dismiss is granted.

CYNTHIA WESTCOTT RICE, J., TIMOTHY P. CANNON, J., COLLEEN MARY O'TOOLE, J., concur.