

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

MARSHALL SLOAN,

Petitioner,

v.

DAVID GRAY, WARDEN,
BELMONT CORRECTIONAL INSTITUTE

Respondent.

OPINION AND JUDGMENT ENTRY
Case No. 18 BE 0014

Writ of Habeas Corpus

BEFORE:

Carol Ann Robb, Gene Donofrio, Cheryl L. Waite, Judges.

JUDGMENT:

Dismissed.

Marshall Sloan, pro se, A652-013, P.O. Box 540, Saint Clairsville, Ohio, 43950 for
Petitioner and

Atty. Maura O'Neill Jaite, Senior Assistant Attorney General, Ohio Attorney General's
Office, Criminal Justice Section, 150 East Gay Street, 16th Floor, Columbus, Ohio 43215
for Respondent.

Dated: October 1, 2018

PER CURIAM.

{¶1} Petitioner Marshall Sloan, proceeding on his own behalf, has filed a petition requesting this court to issue a writ of habeas corpus against Respondent, David Gray, warden of the Belmont Correctional Institution, where he is incarcerated. Petitioner alleges a double jeopardy violation, a violation of the ex post facto clause, violation of equal protection, a violation of a plea bargaining agreement, and a violation of the separation of powers doctrine.

{¶2} Respondent has filed a motion to dismiss pursuant to Civ.R. 12(B)(6) or in the alternative, a motion for summary judgment pursuant to Civ.R. 56(C). Respondent argues that Petitioner's complaint is procedurally defective and fails to raise cognizable habeas corpus claims. Respondent notes that Petitioner failed to include commitment papers concerning his confinement. In response, Petitioner separately filed a motion to amend his petition and a reply in support of his petition. He alleges that he was unable to acquire the required documents because his parole "was never officially revoked," and therefore the documents do not exist.

{¶3} A procedural defect in a petition for habeas corpus is grounds for dismissal. *Womack v. Warden of Belmont Correctional Inst.*, 7th Dist. No. 04-BE-58, 2005-Ohio-1344, ¶ 11, citing *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 696 N.E.2d 594 (1998). The petitioner must attach all pertinent documents according to R.C. 2725.04(D). *Tisdale v. Eberlin*, 114 Ohio St.3d 201, 2007-Ohio-3833, 870 N.E.2d 1191, ¶ 6, citing *State ex rel. Winnick v. Gansheimer*, 112 Ohio St.3d 149, 2006-Ohio-6521, 858 N.E.2d 409, ¶ 5.

{¶4} The requirement to attach pertinent documents applies to parole grant and revocation proceedings. See *Greene v. Turner*, 151 Ohio St.3d 513, 2017-Ohio-8305, 90 N.E.3d 901, ¶ 7. Because Petitioner alleges that his commitment is the result of parole revocation, those documents are pertinent to his writ challenging his commitment. As Respondent correctly points out, this deficiency cannot be cured by subsequent filings. *Boyd v. Money*, 82 Ohio St.3d 388, 389, 696 N.E.2d 568 (1998).

{¶5} Petitioner alleges that he is unable to acquire the pertinent documents. Petitioner offers no evidence that he attempted to procure them and was denied, or that

he was never given the documents or given the required hearing. Importantly, “[u]nsupported conclusions in a habeas petition are not considered admitted, and are not sufficient to withstand dismissal.” *Chari v. Vore*, 91 Ohio St.3d 323, 328, 744 N.E.2d 763 (2001).

{¶6} Regardless, Petitioner has filed an additional parole document as an attachment to his motion to amend. The subsequent attachment only further serves to establish that he did not attach all pertinent documents to his original petition.

{¶7} The petition is procedurally deficient and can be dismissed on that basis alone. Assuming the petition was not procedurally deficient, it would still not survive Respondent’s alternative motion for summary judgment.

{¶8} Habeas corpus should only be issued in extraordinary cases of unlawful restraint where there is no alternative legal remedy. *Wayne v. Bobby*, 7th Dist. No. 02-BE-72, 2003-Ohio-3882, ¶ 3, citing *State ex rel. Pirman v. Money*, 69 Ohio St.3d 591, 593, 635 N.E.2d 26 (1994). In addition, “[h]abeas corpus is not to be used as a substitute for other forms of action, such as direct appeal.” *Bobby*, 7th Dist. No. 02-BE-72, at ¶ 3, citing *Adams v. Humphreys*, 27 Ohio St.3d 43, 500 N.E.2d 1373 (1986).

{¶9} Habeas corpus is not available for alleged double jeopardy clause violations. *Wilson v. Rogers*, 68 Ohio St.3d 130, 131, 623 N.E.2d 1210 (1993). In addition, claims alleging that a parole revocation resulted in ex post facto punishment are not cognizable in a habeas corpus action, because “[a]s long as an unreasonable delay has not occurred, the remedy for noncompliance with the *Morrissey* parole-revocation due process requirements is a new hearing, not outright release from prison.” *State ex rel. Crigger v. Ohio Adult Parole Auth.*, 82 Ohio St.3d 270, 272, 695 N.E.2d 254 (1998), quoting *State ex rel. Jackson v. McFaul*, 73 Ohio St.3d 185, 188, 652 N.E.2d 746 (1995). Petitioner argues that there was an unreasonable delay because he still has not had his parole revoked, but again, his assertion is unsupported by the record.

{¶10} Equal protection claims are also not cognizable in habeas corpus. *State ex rel. Womack v. Sloan*, 152 Ohio St.3d 32, 2017-Ohio-8708, 92 N.E.3d 836, ¶ 8, citing *Thomas v. Huffman*, 84 Ohio St.3d 266, 267, 703 N.E.2d 315 (1998). Additionally, separation of powers arguments against the adult parole authority are not cognizable.

Johnson v. Wolfe, 7th Dist. No. 05-NO-328, 2006-Ohio-1767 (“Clearly, Petitioner could have addressed these concerns in a direct appeal following his conviction and sentencing”).

{¶11} Petitioner argues that the adult parole board violated Ohio Adm.Code 5120:1-1-19(D). Again, the remedy for violations of parole board processes is not release from prison, but a rehearing. *Crigger*, 82 Ohio St.3d at 272, quoting *McFaul*, 73 Ohio St.3d at 188 (“As long as an unreasonable delay has not occurred, the remedy for noncompliance with the *Morrissey* parole-revocation due process requirements is a new hearing, not outright release from prison”). As previously stated, Petitioner has not offered any evidence beyond conclusory statements that his parole was never revoked, and therefore his argument as to undue delay is not sufficient to survive dismissal.

{¶12} Regardless, because Petitioner’s action is procedurally insufficient, he cannot sustain a writ for habeas corpus. Respondent’s motion to dismiss is therefore granted. Granting the motion to dismiss on procedural grounds renders Petitioner’s motion to amend moot. All other pending motions filed by Petitioner are denied as moot.

{¶13} Final order. Costs taxed against Relator. Clerk to serve copies of this decision and judgment entry pursuant to the civil rules.

JUDGE CAROL ANN ROBB

JUDGE GENE DONOFRIO

JUDGE CHERYL L. WAITE