

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

RONALD G. JOHNSON,

Petitioner,

v.

CHRISTOPHER LAROSE, WARDEN,

Respondent.

OPINION AND JUDGMENT ENTRY
Case No. 18 MA 0135

Writ of Habeas Corpus

BEFORE:

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

JUDGMENT:

Dismissed

Ronald G. Johnson (PRO SE) A518-770, 2240 Hubbard Road, Youngstown, Ohio 44505, for Petitioner and

Christopher LaRose, Warden, Core Civic fka Northeast Ohio Correctional Center, 2240 Hubbard Road, Youngstown, Ohio 44505 and Atty. Dave Yost, Ohio Attorney General, Atty. Stephanie L. Watson, Principal Assistant Attorney General, Criminal

Justice Section, 150 East Gay Street, 16th Floor, Columbus, Ohio 43215-6001, for Respondent.

Dated:
December 20, 2019

PER CURIAM.

{¶1} Ronald G. Johnson, proceeding on his own behalf, has filed a complaint for a writ of habeas corpus claiming he has served “duplicate terms” entitling him to immediate release from prison. He is incarcerated at the Northeast Ohio Correctional Center (NEOCC), operated by Core Civic, located at 2240 Hubbard Road in Youngstown, Mahoning County, Ohio. Petitioner’s complaint names NEOCC’s warden, Christopher LaRose, as Respondent.¹ Respondent has filed a motion to dismiss Petitioner’s complaint for a writ of habeas corpus and a motion asking this Court to declare Petitioner a vexatious litigator.

{¶2} While on parole for a conviction in Montgomery County (voluntary manslaughter with a firearm specification), Johnson was arrested and later convicted of a litany of offenses spanning across numerous counties – Fayette (receiving stolen property, failure to comply, and obstructing official business), Adams (burglary), Madison (illegal conveyance of drugs) and Highland (aggravated robbery, burglary, and theft).

{¶3} Petitioner seeks an order granting his immediate release, arguing that the Bureau of Sentence Computation (BOSC) improperly calculated his sentence and “imposed duplicate terms.” He further contends that in so miscalculating, BOSC violated his right to be free from double jeopardy and his right to equal protection and due process. Petitioner reasons that had the improper calculation not occurred, he would have been entitled to be released from prison no later than June 14, 2018. To his handwritten

¹ Core Civic, a for-profit company listed on the New York Stock Exchange, contracts with the U.S. Immigration and Customs Enforcement (ICE) to house immigrant detainees, the United States Marshals Service to house captured fugitives, and the Ohio Department of Rehabilitation and Correction (ODRC) for criminal defendants to serve their term of imprisonment imposed by an Ohio state trial court following a felony conviction. Petitioner falls within the last category, currently serving multiple prison terms as an inmate of the ODRC.

petition, petitioner attached the following: a handwritten memorandum of support; a handwritten list of prior civil actions; a printed copy of an email from ODRC dated December 15, 2015; a printout of what appears to be an online statement, possibly from ODRC but not conclusively so, containing his personal information as well as his offenses and term of incarceration; and several handwritten pages of how petitioner understands his sentencing.

{¶4} In his January 15, 2019 combined motion to dismiss and motion to declare Petitioner a vexatious litigator, Respondent argues the writ should be denied and Petitioner’s case dismissed because 1) Petitioner’s petition fails to comport with R.C. 2969.24(A)(2) and (B); 2) Petitioner failed to attach commitment papers required by R.C. 2725.04; 3) Petitioner is attempting to re-litigate issues already decided with this action; 4) Petitioner failed to comply with R.C. 2969.25; and finally, 5) Petitioner’s maximum sentence has not expired. Further, in the aforementioned combined motion, Respondent requests that Petitioner be declared a vexatious litigator pursuant to R.C. 2323.52.

{¶5} Habeas corpus is only available in extraordinary circumstances where there is no adequate alternative legal remedy. *Kemp v. Ishee*, 7th Dist. Mahoning No. 03-MA-182, 2004-Ohio-390, ¶ 4, citing *State ex rel. Jackson v. McFaul*, 72 Ohio St.3d 185, 186, 652 N.E.2d 746 (1995). Habeas corpus is not available when the issue could have been raised on direct appeal. *Ishee*, 7th Dist. Mahoning No. 03-MA-182 at ¶ 4, citing *Luna v. Russell*, 70 Ohio St.3d 561, 639 N.E.2d 1168 (1994). Further, “where a Petitioner possessed the adequate legal remedies of appeal and post-conviction to challenge his sentencing, a petition for habeas corpus may properly be dismissed.” *Womack v. Warden of Belmont Correctional Inst.*, 7th Dist. Belmont No. 04 BE 58, 2005-Ohio-1344, ¶ 5, citing *State ex rel. Massie v. Rogers*, 77 Ohio St.3d 449, 450, 674 N.E.2d 1383 (1997). In turn, a petitioner “may not use habeas corpus to obtain successive appellate reviews of the same issue.” *Wells v. Hudson*, 113 Ohio St.3d 308, 2007-Ohio-1955, 865 N.E.2d 46, ¶ 7, citing *State ex rel. Rash v. Jackson*, 102 Ohio St.3d 145, 2004-Ohio-2053, 807 N.E.2d 344.

{¶6} Additionally, in an action seeking to secure release from wrongful incarceration, “the burden of proof is on the petitioner to establish his right to release,” and “unsupported and uncorroborated statements of the petitioner, standing alone, are

not sufficient to overcome the presumption of regularity of the court's judgment.” *Yarbrough v. Maxwell*, 174 Ohio St. 287, 288, 189 N.E.2d 136 (1963). The petitioner must show that his detention is unlawful, and is therefore entitled to immediate release. *Halleck v. Koloski*, 4 Ohio St. 2d 76, 212 N.E.2d 601 (1965). Further, as an inmate, a petitioner is required to comport with the procedural rules in R.C. 2969.25 and R.C. 2725.04 regarding habeas filings. And failure to satisfy these statutory requirements is generally fatal to the petition.

{¶17} One of the requirements is that the petitioner must file all the commitment papers pertinent to the arguments being raised in the petition. R.C. 2725.04(D). The commitment papers are necessary for a complete understanding of the petition. *Bloss v. Rogers*, 65 Ohio St.3d 145, 146, 602 N.E.2d 602 (1992). Petitioner has not filed any commitment papers regarding his sentences or terms of imprisonment. Failure to attach copies of the commitment papers as part of the original filing of the petition for habeas corpus requires dismissal of the petition. *Id.*

{¶18} Similarly, the petition has not been verified as required by R.C. 2725.04 (“Application for the writ of habeas corpus shall be by petition, signed and verified * * *.”). In this context, “verification” means a “formal declaration made in the presence of an authorized officer, such as a notary public, by which one swears to the truth of the statements in the document.” *Chari v. Vore*, 91 Ohio St.3d 323, 327, 744 N.E.2d 763 (2001). Failure to verify the petition warrants immediate dismissal. *Id.* Petitioner has included an “Affidavit of Support” akin to an affidavit of verity, but it is not notarized, and as such is devoid of any legal import and fails to satisfy R.C. 2725.04’s verification requirement.

{¶19} In addition, Petitioner has failed to provide a compliant description of prior civil actions. According to R.C. 2969.25, Petitioner was required to file with his petition a list of all other civil actions filed by him within the past five years.

(A) At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court *an affidavit* that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court.

(Emphasis added.)

{¶10} Petitioner wrote down a few cases that “to the best of his knowledge” he recalled filing. In this case, although Petitioner included an “affidavit of support” which purportedly set forth a short, cursory, and admittedly incomplete list of lawsuits he had filed in the preceding five years; what he provided falls well short of what is required under R.C. 2969.25(A). He did not provide a description of each of those actions that he was able to recollect in the form of a notarized affidavit. The Ohio Revised Code defines an affidavit as a “written declaration under oath.” R.C. 2319.02. An affidavit “may be made * * * before any person authorized to take depositions.” R.C. 2319.04. See also *Toledo Bar Assn. v. Neller*, 102 Ohio St.3d 1234, 2004-Ohio-2895, 809 N.E.2d 1152 (held that unsworn written statements that are signed under penalty of perjury may *not* be substituted for affidavits in Ohio). The Ohio Supreme Court has held an inmate’s non-compliance with R.C. 2969.25(A) demonstrated by their failure to provide an affidavit describing lawsuits they have filed against a government entity or employee in the preceding five years merits dismissal of the habeas action. *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533; *State ex rel. Arroyo v. Sloan*, 142 Ohio St.3d 541, 2015-Ohio-2081, 33 N.E.3d 56 (2015).

{¶11} Even assuming there were no procedural defects with Petitioner’s complaint for a writ of habeas corpus, there still would not be cause to issue the writ because, as has been pointed out in previous cases addressing the same arguments Petitioner is making here, he simply misconstrues or misunderstands the BOSC’s proper calculation of his remaining time of incarceration. When he was imprisoned at the Warren Correctional Institution, he filed a similar habeas action with the Twelfth District Court of Appeals in 2015 which it dismissed. On appeal to Ohio Supreme Court, it affirmed, summarizing:

More fundamentally, Johnson is not entitled to immediate release. *Scanlon v. Brunsman*, 112 Ohio St.3d 151, 2006-Ohio-6522, 858 N.E.2d 411, ¶ 4 (“In general, habeas corpus is proper in the criminal context only if the petitioner is entitled to immediate release from prison or some other physical confinement”). As noted previously, Johnson was sentenced to a

term of 7 to 25 years on the Montgomery County charges. According to Johnson, the combination of that sentence with his new 11-year total sentence should have resulted in a term of 18 to 25 years instead of 18 to 36 years. However, as the court of appeals noted, the record makes clear that Johnson has received a number of different consecutive sentences that cannot be encompassed within the sentence that he had received earlier in Montgomery County. Because he is not entitled to immediate release, he has failed to state a claim in habeas.”

Johnson v. Crutchfield, 140 Ohio St.3d 485, 2014-Ohio-3653, 20 N.E.3d 676, ¶ 7 (2014).

{¶12} Petitioner filed virtually the same petition again with the Twelfth District in 2016, it dismissed the petition, and again the Ohio Supreme Court affirmed, summarizing:

Johnson’s petition was properly dismissed because it fails to state a claim. “When a sentencing court imposes a definite term of imprisonment consecutively to an indefinite term, the Ohio Administrative Code requires the prisoner to serve the definite term first, followed by the indefinite term.” *Jones v. Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 16AP-138, 2016-Ohio-5425, 2016 WL 4398801, ¶ 16; Ohio Adm.Code 5120-2-03.2(E). As the 2007 letter from BOSC indicates, Johnson’s maximum term will not expire until 2024. Until that time, any claim for immediate release is unripe. In addition, his other claims are not cognizable in habeas corpus. *Jackson v. Johnson*, 135 Ohio St.3d 364, 2013-Ohio-999, 986 N.E.2d 989, ¶ 3 (due process); *Elersic v. Wilson*, 101 Ohio St.3d 417, 2004-Ohio-1501, 805 N.E.2d 1127, ¶ 3 (double jeopardy); *Thomas v. Huffman*, 84 Ohio St.3d 266, 267, 703 N.E.2d 315 (1998) (equal protection).

Johnson v. Moore, 149 Ohio St.3d 716, 2017-Ohio-2792, 77 N.E.3d 967, ¶ 7 (2017)

{¶13} Turning to Respondent’s motion requesting this Court to declare Petitioner a vexatious litigator under R.C. 2323.52, we do not presently have a local rule governing vexatious litigation in the court of appeals, and we decline to adopt an ad hoc rule for purposes of this case. See, e.g., Eighth District Court of Appeals Loc.R. 23; App.R. 23;

State v. Pruitt, 8th Dist. Cuyahoga No. 101736, 2015-Ohio-1949. Respondent's motion is overruled.

{¶14} Based upon all of the aforementioned procedural and substantive deficiencies, Respondent's motion to dismiss is sustained and Petitioner's complaint for a writ of habeas corpus is dismissed. Respondent's motion to declare Petitioner a vexatious litigator is denied for lack of jurisdiction.

{¶15} Final order. Costs taxed against Petitioner. Clerk to serve notice as provided by the Civil Rules.

JUDGE GENE DONOFRIO

JUDGE CHERYL L. WAITE

JUDGE CAROL ANN ROBB