

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

MORRIS PERRY, SR.,

Relator/Petitioner,

v.

MAHONING COUNTY, YOUNGSTOWN, OHIO, SHERIFF, JERRY
GREENE,

Respondent.

OPINION AND JUDGMENT ENTRY
Case No. 19 MA 0043

Writ of Habeas Corpus

BEFORE:

David A. D'Apolito, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:

Dismissed.

Morris Perry, *Pro Se*, 110 Fifth Avenue, Youngstown, Ohio, 44503, Relator/Petitioner,
and

Atty. Paul J. Gains, Mahoning County Prosecutor, and *Atty. Ralph M. Rivera*, Assistant
Prosecuting Attorney, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for
Respondent.

Dated: January 22, 2020

PER CURIAM.

{¶1} Petitioner Morris Perry, Sr., proceeding on his own behalf, has filed a petition for a writ of habeas corpus asserting the \$50,000 cash or surety bond set by the trial court is unreasonable and excessive. Respondent has filed a motion to dismiss highlighting procedural defects of the petition, and alternatively, arguing the petition lacks substantive merit. Because Petitioner has failed to fulfill the mandatory procedural requirement of including his commitment papers with his petition pursuant to R.C. 2725.04(D), we must dismiss Relator’s petition on that basis.

{¶2} On October 18, 2018, the Mahoning County Grand Jury indicted Relator on one count of rape of a child less than thirteen years of age with a force or threat of force specification in violation of R.C. 2907.02(A)(1)(b)(B), a felony-life offense. Relator pleaded not guilty and the trial court appointed him counsel. The case has proceeded to discovery and other pre-trial matters, including the trial court’s establishing the conditions of Relator’s bond in a judgment entry filed on December 7, 2018. The conditions include: posting a bond of \$50,000 cash or surety; electronically monitored house arrest with no privileges unless specifically granted by the court; have no contact whatsoever with the victim; not to be within 1000 feet of victim, victim’s residence or victim’s family; and, lastly, no unsupervised contact with minors. The last sentence of the entry which is immediately followed by Relator’s signature states: “I further understand that I shall fully cooperate with my attorney in all matters pertaining to my case.”

{¶3} Ten days later, Relator began to file a litany of motions on his behalf. Of particular relevance to this action, Relator filed a motion for bond reduction on December 17, 2018, and renewed the motion on March 18, 2019. It is important to note that although a defendant has the right to counsel or the right to act pro se, a defendant does not have any right to “hybrid representation.” *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227, paragraph one of the syllabus; *State v. Thompson*, 33 Ohio St.3d 1, 6-7, 514 N.E.2d 407 (1987). The right to counsel and the right to act pro se “are independent of each other and may not be asserted simultaneously.” *Martin*, paragraph one of the syllabus. More importantly, this Court has specifically held where counsel

represents a criminal defendant, a trial court may not entertain a defendant's pro se motion. *State v. Brown*, 7th Dist. Mahoning No. 16 MA 0059, 2017-Ohio-7704, ¶ 21, *Accord State v. Mongo*, 8th Dist. Cuyahoga No. 100926, 2015-Ohio-1139, ¶¶ 13-15; *State v. Smith*, 4th Dist. Highland No. 09CA29, 2010-Ohio-4507, ¶ 100, *State v. Davis*, 10th Dist. Franklin No. 05AP-139, 2006-Ohio-5093, ¶ 12; *State v. Greenleaf*, 11th Dist. Portage No. 2005-P-0017, 2006-Ohio-4317, ¶ 70. Notably, Relator's first appointed counsel filed a motion to withdraw from the stating that there had been a breakdown of the attorney-client relationship, which the trial court granted and appointed him substitute trial counsel. Relator has been represented by appointed trial counsel at all times and stages of the proceedings below. Despite filing numerous motions on his behalf, most of which are duplicative and redundant of those filed by his appointed trial counsel, Relator has never requested of the trial court to proceed pro se.

{¶4} The Ohio Revised Code imposes certain filing requirements of a proper petition for writ of habeas corpus. R.C. 2725.01, et seq., specifically governs habeas filings, and failure to satisfy these statutory requirements is generally fatal to the petition. One of the more important requirements is that the petitioner must file all pertinent commitment papers relevant to the arguments being raised in the petition:

Application for the writ of habeas corpus shall be by petition, signed and verified either by the party for whose relief it is intended, or by some person for him, and shall specify:

* * *

(D) A copy of the commitment or cause of detention of such person shall be exhibited, if it can be procured without impairing the efficiency of the remedy; or, if the imprisonment or detention is without legal authority, such fact must appear.

R.C. 2725.04(D).

{¶5} The Ohio Supreme Court has acknowledged the necessity and importance of these papers:

These commitment papers are necessary for a complete understanding of the petition. Without them, the petition is fatally defective. When a petition is presented to a court that does not comply with R.C. 2725.04(D), there is no showing of how the commitment was procured and there is nothing before the court on which to make a determined judgment except, of course, the bare allegations of petitioner's application.

Bloss v. Rogers, 65 Ohio St.3d 145, 146, 602 N.E.2d 602 (1992).

{¶6} In this instance, Relator did not attach any of the required commitment paper(s). He attached a copy of his indictment, but that is inadequate. On this exact issue, the Ohio Supreme Court has specifically held “[a]ttaching the indictment to the complaint is insufficient to satisfy the statute, because the indictment is merely a charge of wrongdoing and fails to demonstrate how the commitment was procured.” *State ex rel. Arroyo v. Sloan*, 142 Ohio St.3d 541, 2015-Ohio-2081, 33 N.E.3d 56, ¶ 3. Moreover, “[s]uch a failure is fatal to a petition for habeas corpus.” *Id.*

{¶7} Even if we were able to proceed with a substantive review of Relator's petition, it would still fail. Persons accused of crimes are “bailable by sufficient sureties” and “[e]xcessive bail shall not be required.” Section 9, Article I, Ohio Constitution. The purpose of bail is to secure the attendance of the accused at trial. *Jenkins v. Billy*, 43 Ohio St.3d 84, 85, 538 N.E.2d 1045 (1989). Habeas corpus is an extraordinary remedy. *Howard v. Catholic Social Serv. of Cuyahoga Cty., Inc.*, 70 Ohio St.3d 141, 145, 637 N.E.2d 890 (1994). However, habeas corpus is the proper remedy to raise the claim of excessive bail in pretrial-release cases. *Chari v. Vore*, 91 Ohio St.3d 323, 325, 744 N.E.2d 763 (2001).

{¶8} The burden of proof in a habeas corpus case alleging excessive bail is on the petitioner. *Id.* at 325. “In satisfying this burden of proof, the petitioner must first introduce evidence to overcome the presumption of regularity that attaches to all court proceedings.” *Id.*

{¶9} Petitioner here has failed to meet his burden. The bulk of his petition is unrelated to bail, instead focusing on what he perceives as procedural irregularities and asserting his innocence. On the topic of bail, he simply makes the conclusory assertion

that the \$50,000 bail set by the trial court is excessive and unreasonable under the circumstances. This is insufficient.

{¶10} “[I]n order to avoid dismissal, a petitioner must state with particularity the extraordinary circumstances entitling him to habeas corpus relief. * * * Unsupported conclusions contained in a habeas corpus petition are not considered admitted and are insufficient to withstand dismissal.” *Id.* at 328. Like the petition in *Chari*, the petition here contains only “unsupported, legal conclusions, *i.e.*, that his bail is unlawful, excessive, and unconstitutional” and “allege[s] no facts that indicate either an abuse of discretion by the trial court or that appropriate grounds for independent review exist by the court of appeals * * *.” *Id.*

{¶11} As indicated, Petitioner has not stated with particularity the extraordinary circumstances entitling him to habeas corpus relief and that failure to do so is an additional, sufficient independent basis to dismiss his application for the writ. Moreover, Relator’s claim that the \$50,000 is unreasonable and excessive is undermined by the fact that Relator posted the bail on September 11, 2019, and was released from jail. Additionally, thereafter the trial court twice granted Relator’s motions for modification of his bond conditions permitting him to attend social security, welfare, and doctor appointments.

{¶12} However, subsequent to his release and the granting of those modifications, the trial court determined Relator had violated the conditions of his bond and has since issued a bench warrant for his arrest. Nevertheless, we would determine that the trial court’s setting Relator’s bail at \$50,000 is reasonable. Relator is accused of committing an offense for which there is a heightened level of seriousness. The Ohio Supreme Court in *Bland v. Holden*, 21 Ohio St.2d 238, 239, 257 N.E.2d 397, highlighted an understandable, potential correlation:

The purpose of bail is to secure the attendance of the accused at his trial. The amount of bail is largely within the sound discretion of the court. The court may consider the character and past record of the accused, the seriousness of and the number of crimes for which he is charged and the penalties attached thereto. Annotation, 72 A.L.R. 801. If the penalty is not great, the accused may have no incentive to jump bail. On the other hand,

if an accused is charged with crimes the conviction for which would result in long incarceration, with little hope of early release or probation, the incentive to abscond is greater and the amount must be such as to discourage the accused from absconding.

(Emphasis added.)

{¶13} Here, if convicted of the offense for which he was indicted, Relator would be facing life in prison. Consequently, we would be unable to conclude \$50,000 bail is excessive or unreasonable under the facts and circumstances of this case.

{¶14} Accordingly, Respondent's motion to dismiss is granted and Relator's petition is dismissed.

{¶15} Final order. Clerk to service notice as provided by the Rules of Civil Procedure. Costs taxed to Relator.

JUDGE DAVID A. D'APOLITO

JUDGE GENE DONOFRIO

JUDGE CAROL ANN ROBB