

[Cite as *In re Evans*, 2019-Ohio-1129.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 108316

---

IN THE MATTER OF  
TAMAR EVANS

PETITIONER

---

**JUDGMENT:**  
PETITION DISMISSED

---

Writ of Habeas Corpus  
Order No. 526742

**RELEASE DATE:** March 26, 2019

## **ATTORNEY FOR PETITIONER**

Kimberly Kendall Corral  
4403 St. Clair Avenue  
Cleveland, Ohio 44103

## **ATTORNEY FOR RESPONDENT**

Michael C. O'Malley  
Cuyahoga County Prosecutor  
The Justice Center, 9th Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

MARY J. BOYLE, J.:

{¶1} Petitioner, Tamar Evans, seeks a writ of habeas corpus claiming the amount of bond set in his criminal case is excessive. We sua sponte dismiss the petition without reaching the merits because it is procedurally defective.

### **I. Procedural History and Facts**

{¶2} In September 2003, in *State v. Evans*, Cuyahoga C.P. No. CR-03-442218-ZA, Evans was indicted and charged with aggravated murder, murder, aggravated robbery, and carrying a concealed weapon. On June 18, 2004, a combined change of plea and sentencing journal entry was filed, indicating that Evans pleaded guilty to a reduced charge of involuntary manslaughter and carrying a concealed weapon. The other counts were dismissed. The court imposed an aggregate agreed 35-year sentence composed of a combined 24-year sentence on the above case served consecutive to a combined 9-year sentence imposed in a separate case.

{¶3} In late 2017, Evans filed a successive motion to withdraw his guilty pleas. This motion was supported by affidavits that were sufficient to cause the trial court to hold a hearing. On August 21, 2018, the trial court granted the motion.

{¶4} On September 1, 2018, Evans filed a motion for bond reduction to personal bond with court-supervised release. After a pretrial, the trial court denied the request on September 6, 2018. Evans filed a renewed motion for bond reduction on December 18, 2018. There, he requested that the bond be reduced to “\$50,000 cash/surety/property/10%” with GPS monitoring. This motion was denied without the benefit of a hearing on January 7, 2019. On March 15, 2019, Evans filed the instant petition for writ of habeas corpus alleging that he is being held on excessive bail.

## **II. Law and Analysis**

{¶5} “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), citing *State ex rel. Smirnoff v. Greene*, 84 Ohio St.3d 165, 168, 702 N.E.2d 423 (1998) (collecting cases). See also *State v. Towns*, 8th Dist. Cuyahoga No. 88059, 2007-Ohio-529, ¶ 20. However, the instant petition is fatally defective, which necessitates dismissal.

{¶6} “R.C. Chapter 2725 establishes the summary procedure for bringing a habeas corpus action.” *Chari* at 327, citing *Gaskins v. Shiplevy*, 76 Ohio St.3d 380, 381, 667 N.E.2d 1194 (1996). R.C. 2725.04 provides,

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:

(A) That the person in whose behalf the application is made is imprisoned, or restrained of his liberty;

(B) The officer, or name of the person by whom the prisoner is so confined or restrained; or, if both are unknown or uncertain, such officer or person may be described by an assumed appellation and the person who is served with the writ is deemed the person intended;

(C) The place where the prisoner is so imprisoned or restrained, if known;

(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.

{¶7} Here, Evans's petition failed to name any party as respondent, let alone the party in whose custody Evans is currently confined, and failed to attach a copy of the commitment or cause of detention. The failure to comply with the basic filing requirements of R.C. 2725.04 necessitate dismissal. *State ex rel. McCuller v. Callahan*, 98 Ohio St.3d 307, 2003-Ohio-858, 784 N.E.2d 108, ¶ 4 (failure to attach commitment papers is fatal to a petition for habeas corpus); *Nash v. Mason*, 8th Dist. Cuyahoga No. 84250, 2004-Ohio-1686, ¶ 6 (holding a petition for writ of habeas corpus was defective because the petitioner named the prosecuting attorney as respondent rather than the person who is holding the petitioner in custody, which is a sufficient ground for dismissal).

{¶8} Further, Evans is required to comply with the filing requirements of R.C. 2969.25 and the affidavit described in R.C. 2969.25(A) detailing all civil actions or appeals of civil actions commenced against a government entity or employee within the last five years. *State ex rel. Dixon v. Bowerman*, Slip Opinion No. 2019-Ohio-716, ¶ 4. *See also Al'Shahid v. Cook*, 144 Ohio St.3d 15, 2015-Ohio-2079, 40 N.E.3d 1073, ¶ 9; *Coe v. McFaul*, 8th Dist. Cuyahoga No. 89749, 2007-Ohio-2104, ¶ 4. Again, no such affidavit was attached to the petition, which could be fatal. *Bowerman* at ¶ 4. *But see State ex rel. Wickensimer v. Bartleson*, 123 Ohio St.3d 154, 2009-Ohio-4695, 914 N.E.2d 1045 (holding that where no prior civil actions were filed within

the five-year period, the failure to include the affidavit required by R.C. 2969.25(A) was not, itself, grounds for dismissal).

{¶9} Evans also failed to properly caption the petition and include the addresses of the parties in the caption as required by Civ.R. 10(A). The Ohio Supreme Court has required compliance with Civ.R. 10(A) for habeas corpus petitions and found dismissal appropriate where the petition is improperly captioned. *Greene v. Turner*, 151 Ohio St.3d 513, 2017-Ohio-8305, 90 N.E.3d 901, ¶ 8, 11.

{¶10} “[A] court may dismiss a habeas petition sua sponte if the petition does not contain a facially valid claim.” *Al’Shahid* at ¶ 7, citing *State ex rel. Crigger v. Ohio Adult Parole Auth.*, 82 Ohio St.3d 270, 271, 695 N.E.2d 254 (1998). The failure to comply with the filing requirements in R.C. 2725.04 and Civ.R. 10(A) means that Evans has not presented a facially valid claim. *Id.* at ¶ 11.

{¶11} Therefore, this court sua sponte dismisses the petition for writ of habeas corpus for failure to attach the commitment papers or cause of detention, failure to name a necessary party, and failure to properly caption the petition.

{¶12} The Clerk of the Eighth District Court of Appeals is ordered to serve a copy of this judgment upon all parties as required by Civ.R. 58(B). Costs to petitioner.

{¶13} Petition dismissed.

---

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, A.J., and  
LARRY A. JONES, SR., J., CONCUR

