

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

RONALD CARMAN,	:	
	:	
Petitioner,	:	No. 109291
	:	
v.	:	
	:	
GREGORY CROUCHER, SHERIFF,	:	
	:	
Respondent.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: PETITION DENIED

DATED: February 11, 2020

Writ of Habeas Corpus
Motion No. 534549
Order No. 535540

Appearances:

Ronald Carman, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Mary M. Frey, Assistant Prosecuting
Attorney, *for respondent*.

EILEEN T. GALLAGHER, A.J.:

{¶ 1} Petitioner, Ronald Carman, seeks a writ of habeas corpus directing respondent, Gregory Croucher, to release him from custody. Carman argues that he is being held in jail pending trial on a defective indictment. The petition for writ of

habeas corpus is dismissed because of numerous procedural defects and because petitioner's arguments do not avail him of relief in habeas corpus.

I. Procedural and Factual History

{¶ 2} On December 10, 2019, Carman filed a petition for writ of habeas corpus, improperly captioned as a motion. In the petition, Carman asserts that he was indicted and charged with several felony counts in *State v. Carman*, Cuyahoga C.P. No. CR-16-604846 on March 30, 2016. He asserts that prior to his indictment he was incarcerated in a state prison. He was to be released from prison on April 20, 2016. However, on February 26, 2016, he was transferred from prison to the Cuyahoga County Jail. He claims that the failure to indict him within one month of his transfer from prison to county jail has caused a defect in the indictment.

{¶ 3} Respondent filed a motion for summary judgment on December 20, 2019. There, he argued that Carman's filing is fatally defective and also fails on the merits. Carman did not respond in opposition to the motion for summary judgment. The matter is deemed fully briefed.

II. Law and Analysis

A. Standards

{¶ 4} "A writ of habeas corpus 'is warranted in certain extraordinary circumstances "where there is an unlawful restraint of a person's liberty and there is no adequate remedy in the ordinary course of law."'" *State ex rel. Kerr v. Turner*, Slip Opinion No. 2019-Ohio-4760, ¶ 5, quoting *Johnson v. Timmerman-Cooper*, 93

Ohio St.3d 614, 616, 757 N.E.2d 1153 (2001), quoting *Pegan v. Crawmer*, 76 Ohio St.3d 97, 99, 666 N.E.2d 1091 (1996).

{¶ 5} The matter is before this court on respondent's motion for summary judgment. Pursuant to Civ.R. 56, "summary judgment is warranted if (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach a conclusion only in favor of the moving party." *State ex rel. Jackson v. Ambrose*, 151 Ohio St.3d 536, 2017-Ohio-8784, 90 N.E.3d 922, ¶ 14, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977). Respondent, as the party claiming entitlement to judgment as a matter of law, must show that there is no genuine issue of material fact and judgment must be rendered in respondent's favor. *Id.*

B. Procedural Defects

1. Proper Party

{¶ 6} R.C. 2725.04 requires that an application for writ of habeas corpus be made "by petition, signed and verified by the party for whose relief it is intended, or by some person for him" and requires the petition to name the officer or person in whose custody the prisoner is confined or restrained. R.C. 2725.04(B).

{¶ 7} Here, Carman has asserted, by motion rather than petition, that he is being detained in the Cuyahoga County Jail. Those held in a county jail fall under the auspices of the county sheriff where the jail is located. *Whitman v. Shaffer*, 8th Dist. Cuyahoga No. 94486, 2010-Ohio-446, ¶ 3. Carman has not named the

Cuyahoga County sheriff as respondent. Instead, he has named an employee of the sheriff's department. Carman has failed to comply with R.C. 2725.04(B), necessitating denial of his claim. *Id.*, citing *State ex rel. Sherrills v. State*, 91 Ohio St.3d 133, 742 N.E.2d 651 (2001) (*Whitman* holds that the failure to name the county sheriff as respondent is grounds for dismissal.).

2. Civ.R. 10 Caption

{¶ 8} The Ohio Rules of Civil Procedure apply to original actions in the court of appeals unless clearly inapplicable. Loc.App.R. 45(A)(3). Civ.R. 10(A) requires a complaint to include the names and addresses of all the parties in the case caption. This rule applies to Carman's petition for relief in habeas corpus. *Kneuss v. Sloan*, 146 Ohio St.3d 248, 2016-Ohio-3310, 54 N.E.3d 1242, ¶ 11. The failure to comply with Civ.R. 10(A) is sufficient grounds to deny the requested relief. *Greene v. Turner*, 151 Ohio St.3d 513, 2017-Ohio-8305, 90 N.E.3d 901, ¶ 5, 8.

{¶ 9} Here, Carman did not include any addresses for the parties in the caption of his filing. This constitutes sufficient reason to grant respondent's motion for summary judgment. *Id.*

3. R.C. 2969.25

{¶ 10} An inmate filing an original action in a court of appeals against a government entity or employee must comply with R.C. 2969.25. The failure to do so constitutes grounds for dismissal. *Greene* at ¶ 5, 6.

{¶ 11} R.C. 2969.25(A) requires the inclusion of 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.

{¶ 12} Carman filed a list of prior actions with a description of each, but the document was not notarized. This is insufficient to meet the affidavit requirement set forth in R.C. 2969.25(A). *State ex rel. Johnson v. Ohio Adult Parole Auth.*, 95 Ohio St.3d 463, 2002-Ohio-2481, 768 N.E.2d 1176, ¶ 5 (holding that an unnotarized statement of prior civil actions did not meet the requirement of R.C. 2969.25(A)). “A paper purporting to be an affidavit, but not to have been sworn to before an officer, is not an affidavit.” *Benedict v. Peters*, 58 Ohio St. 527, 536-537, 51 N.E. 37 (1898), citing *Morris v. State*, 2 Tex. Ct. App. 502 (1877).

{¶ 13} One of the other procedural requirements imposed by this statute is if an inmate seeks the waiver of the prepayment of the filing fee, the inmate must file an affidavit of waiver and affidavit of indigency that includes the following:

A statement that sets forth the balance in the inmate account of the inmate for each of the preceding six months, as certified by the institutional cashier;

A statement that sets forth all other cash and things of value owned by the inmate at that time.

R.C. 2969.25(C)(1) and (C)(2).

{¶ 14} Carman filed an affidavit of indigency, but failed to include a statement certified by the institutional cashier setting forth the balance in Carman’s account for the previous six months. This is required by R.C. 2969.25(C)(1). The

failure to comply with this requirement is grounds to deny relief and impose costs. *Greene*, 151 Ohio St.3d 513, 2017-Ohio-8305, 90 N.E.3d 901, at ¶ 5, 6.

C. Availability of Relief in Habeas Corpus

{¶ 15} Even if this court ignores these fatally defective procedural irregularities, Carman is still not entitled to relief in habeas corpus.

{¶ 16} Carman claims entitlement to relief in habeas corpus based on an argument that relies on 18 U.S.C. 3161 et seq., known as the “Speedy Trial Act of 1974,” and federal cases dealing with it: *Zedner v. United States*, 547 U.S. 489, 126 S.Ct. 1976, 164 L.Ed.2d 749 (2006); and *United States v. Washington*, 48 F.3d 73 (2d Cir.1995).

{¶ 17} Generally, under 18 U.S.C. 3161(b), a person must be indicted within 30 days of the date the person is arrested. Carman’s chief complaint appears to be that he was moved from prison to the Cuyahoga County Jail on February 26, 2016, and indicted on March 30, 2016, rather than waiting until April 30, 2016, when he was scheduled to be released from prison. Carman claims that this failure to wait until his release resulted in a violation of this federal act, which caused a defect in the indictment in his criminal case. However, the exact nature of defect in the indictment is unclear from a reading of Carman’s arguments because he fails to indicate how the federal procedural statutes relate to his state criminal case. The federal statutes that Carman relies on do not apply to state courts. *United States v. Thomas*, 55 F.3d 144 (4th Cir.1995).

{¶ 18} Carman claims the Sixth District Court of Appeals cited to the federal act in a case — *State v. Kennedy*, 6th Dist. Wood No. WD-81-19, 1981 Ohio App. LEXIS 13301 (Dec. 4, 1981). In that case, a dissenting judge cited to 18 U.S.C. 3162 in a footnote in an argument related to a former rule of superintendence, C.P. Sup.R. 8(A), discussing the dismissal of charges rather than the dismissal of an indictment. *Id.* at 7, fn.1 (Potter, J., dissenting). The case does not stand for the proposition that the federal act applies to state courts. The federal act does not provide a means to assert that the indictment in Carman’s underlying criminal case is defective.

{¶ 19} If Carman is asserting a violation of his speedy trial rights through this action, such a claim is not cognizable in habeas corpus. *Clarke v. McFaul*, 8th Dist. Cuyahoga No. 89436, 2007-Ohio-1592, ¶ 7, citing *State ex rel. Brantley v. Ghee*, 80 Ohio St.3d 287, 685 N.E.2d 1243 (1997); *Prather v. Brigano*, 86 Ohio St.3d 609, 716 N.E.2d 197 (1999); *Washington v. Tyson-Parker*, 101 Ohio St.3d 131, 2004-Ohio-298, 802 N.E.2d 655; and *In re Singer*, 45 Ohio St.2d 130, 341 N.E.2d 849 (1976). “Appeal provides an adequate remedy at law, precluding habeas relief.” *Id.* citing *Moore v. Kochevar*, 8th Dist. Cuyahoga No. 84588, 2004-Ohio-2687.

{¶ 20} More generally, a claimed defect in the indictment can be raised on appeal, precluding relief in habeas corpus. *Id.* at ¶ 10, citing *Marshall v. Lazaroff*, 77 Ohio St.3d 443, 674 N.E.2d 1378 (1997); *State ex rel. Simpson v. Lazaroff*, 75 Ohio St.3d 571, 664 N.E.2d 937 (1996); and *State ex rel. Hadlock v. McMackin*, 61 Ohio St.3d 433, 575 N.E.2d 184 (1991).

III. Conclusion

{¶ 21} Carman's filing contains numerous fatal procedural defects that require denial of relief. Further, even if the arguments raised are considered, they do not, as a matter of law, satisfy the extraordinary requirements for relief in habeas corpus. Accordingly, respondent's motion for summary judgment is granted.

{¶ 22} Petition denied.

EILEEN T. GALLAGHER, ADMINISTRATIVE JUDGE

MARY J. BOYLE, J., and
LARRY A. JONES, SR., J., CONCUR