

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

Ronald Chappell,

Petitioner,

V.

Donald Morgan, Warden Southern
Ohio Correctional Facility,

Respondent.

Case No. 14CA3673

DECISION AND JUDGMENT ENTRY

RELEASED: 02/23/2015

HOOVER, P.J.,

{¶¶} Petitioner Ronald Chappell, a prisoner, filed a habeas corpus petition seeking the immediate release from prison. He argues that he was denied a preliminary hearing after he was initially arrested in 2012 for domestic violence, harassment with a bodily substance, and vandalism. Therefore, he contends that the trial court did not have jurisdiction over him. Chappell was convicted by a jury and sentenced to a total prison term of five years. His prison term expires on January 20, 2017.

{¶12} Chappell appealed his criminal convictions and the Seventh District Court of Appeals affirmed the judgment in *State v. Chappell*, 7th Dist. Mahoning App. No. 12MA206, 2014-Ohio-3877. He raised the same argument in his appeal that he makes now in his habeas petition. The appellate court rejected it:

Appellant argues that the court should have granted a motion to dismiss he filed on March 12, 2012. The theory of dismissal was that Appellant did not receive a preliminary hearing at the Youngstown Municipal Court after he was initially arrested. It is well-settled that failure to hold a preliminary

hearing within the time frame set by R.C. 2945.71(C)(1) does not affect a subsequent indictment and conviction. *State v. Pugh*, 53 Ohio St .2d 153, 372 N.E.2d 1351 (1978), syllabus. Further, a defendant has no right to a preliminary hearing once a grand jury has issued an indictment. *State ex rel. Haynes v. Powers*, 20 Ohio St.2d 46, 48, 254 N.E.2d 19 (1969).

Id. at ¶ 9.

{¶3} Chappell has filed five previous habeas corpus petitions. He filed two in Richland County Court of Common Pleas, Case Nos. 2013CV0960 and 2013CV1055, which were dismissed by the court. He filed one previous habeas corpus petition with this Court raising claims that his right to a speedy trial were violated, *Chappell v. Morgan*, 4th Dist. Scioto Case No. 14CA3607, which we dismissed on procedural grounds. Chappell appealed our decision and the Supreme Court of Ohio affirmed both on procedural and substantive grounds, holding that a speedy trial claim is not cognizable in habeas corpus. *Chappell v. Morgan*, 141 Ohio St.3d 16, 2014-Ohio-4035, 21 N.E.3d 273. Chappell also filed two habeas corpus petitions with the Supreme Court of Ohio, both which were sua sponte dismissed. See *Chappell v. Morgan*, Case No. 2014-0429, Entry (Jun. 25, 2014) and *Chappell v. Morgan*, Case No. 2014-1137, Entry (Nov. 19, 2014).

{¶4} The state filed a motion to dismiss pursuant to Civ. R. 12(B)(6), raising both substantive and procedural arguments. Chappell filed a response.

{¶5} We find that Chappell's habeas corpus petition should be dismissed because he has an adequate remedy at law through appeal and because it is barred by res judicata. We also find that his appeal should be dismissed on procedural grounds for failing to comply with R.C. 2969.25(C)(1) as he did not include a certified institutional

cashier statement that sets for the balance in his inmate account for each of the preceding six months.

II.

{¶6} Habeas corpus petitions are governed by R.C. 2725. In order to be entitled to a writ of habeas corpus, the prisoner must be able to establish that his present incarceration is illegal because the trial court that rendered the conviction lacked jurisdiction over the criminal case. R.C. 2725.05. Where the prisoner asserts that the trial court committed non-jurisdictional errors in the underlying case, the errors can be adequately reviewed in a direct appeal of the conviction and the habeas corpus petition should be dismissed. *State ex rel. Harsh v. Sheets*, 132 Ohio St.3d 198, 2012-Ohio-2368, 970 N.E.2d 926; *State ex rel. Shackelford v. Moore*, 116 Ohio St. 3d 310, 2007-Ohio-6462, 878 N.E.2d 1035.

{¶7} Here, Chappell claims that he was not given a preliminary hearing after his arrest and, therefore, the trial court did not have jurisdiction over him. His claim could have been challenged on appeal and it was, in fact, included as an argument in his appeal and was addressed by the appellate court. *State v. Chappell*, 7th Dist. Mahoning App. No. 12MA206, 2014-Ohio-3877, ¶ 9. Chappell may not use habeas corpus to obtain successive appellate reviews of the same issue. *State ex rel. Rash v. Jackson*, 102 Ohio St.3d 145, 2004-Ohio-2053, 807 N.E.2d 344, ¶ 12. And, like other extraordinary-writ actions, habeas corpus is not available when there is an adequate remedy in the ordinary course of law. *Smith v. Bradshaw*, 109 Ohio St.3d 50, 2006-Ohio-1829, 845 N.E.2d 516. Because Chappell had an adequate remedy through his

appeal, his habeas corpus petition must be dismissed. See generally *Chari v. Vore* (2001), 91 Ohio St.3d 323, 327, 744 N.E.2d 763.

{¶8} We also find that Chappell's petition is barred by res judicata. The doctrine of res judicata has been consistently applied to preclude the filing of successive habeas corpus petitions. *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378. This is Chappell's sixth habeas corpus petition. Any cognizable claim he might have he either raised or could have raised in a previous habeas corpus case. *Goins v. Pineda*, 128 Ohio St.3d 358, 2011-Ohio-529, 944 N.E.2d 660.

{¶9} Finally, Chappell's habeas corpus petition suffers from a procedural defect. R.C. 2969.25(C)(1) requires that if an inmate who files a civil action or appeal against a government entity or employee seeks a waiver of the prepayment of the full filing fees assessed by the court, the inmate shall file with the complaint or notice of appeal an affidavit that the inmate is seeking a waiver of the prepayment of the court's full filing fees and an affidavit of indigency. The affidavit of waiver and the affidavit of indigency must include 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.

{¶10} Here, Chappell sought a waiver of prepayment of filing fees, but did not attach a statement of his inmate account. The failure to comply with the provisions of R.C. 2969.25 requires the dismissal of the action. *Fuqua v. Williams*, 100 Ohio St. 3d 211, 2003-Ohio-5533, 797 N.E.2d 982. Because Chappell's petition does not include a certified inmate account statement, his petition is defective and must be dismissed.

III.

{¶11} We find that Chappell's habeas corpus petition must be dismissed because he had other adequate legal remedies he could have pursued, and did, to protect his rights. Moreover, the petition – his sixth in three years – is barred by res judicata. Additionally, we find that Chappell's petition is defective for failing to comply with R.C. 2969.25(C)(1). Thus, we hereby grant the state's motion to dismiss and **DISMISS** Chappell's habeas corpus petition.

{¶12} The clerk shall serve a copy of this order on all counsel of record and unrepresented parties at their last known addresses by ordinary mail.

MOTION GRANTED. PETITION DISMISSED. COSTS TO PETITIONER.
IT IS SO ORDERED.

Harsha, J. & Abele, J.: Concur.

FOR THE COURT

Marie Hoover
Presiding Judge

NOTICE

This document constitutes a final judgment entry and the time period for appeal commences from the date of filing with the clerk.

Pursuant to Civ.R. 58(B), the clerk is ORDERED to serve notice of the judgment and its date of entry upon the journal on all parties who are not in default for failure to appear. Within three (3) days after journalization of this entry, the clerk is required to serve notice of the judgment pursuant to Civ.R. 5(B), and shall note the service in the appearance docket.