

[Cite as *State ex rel. Richardson v. Winston*, 2001-Ohio-4145.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 80425

STATE OF OHIO EX REL.	:	
WILLIE RICHARDSON	:	PETITION FOR WRIT OF HABEAS CORPUS
	:	
PETITIONER	:	MOTION NO. 33191
	:	
v.	:	JOURNAL ENTRY AND OPINION
	:	
DEBRA WINSTON, ET AL.	:	
	:	
	:	
RESPONDENTS	:	

DATE OF JOURNALIZATION: November 15, 2001

JUDGMENT: WRIT DISMISSED.

APPEARANCES:

For Petitioner:	Willie Richardson, <i>pro se</i> 1710 Prospect Avenue Harbor Light Complex Cleveland, OH 44115
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For Respondent:	Legal Counsel Harbor Light Complex 1710 Prospect Avenue Cleveland, OH 44115
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TIMOTHY E. McMONAGLE, P.J.:

*Sua Sponte*, we dismiss the petitioner's complaint, as filed on October 30, 2001, which requests that this court issue a Writ of Habeas Corpus against respondent, Debra Winston, Director of the Harbor Light Complex. Mr. Richardson submits that the Court of Common Pleas was without jurisdiction because "a proper affidavit was never filed in the municipal court which is a prerequisite to the acquiring of jurisdiction of the action." Attached to the petition is a copy of the indictment and sentencing journal from *State v. Richardson*, Cuyahoga County Common Pleas Court, Case No. CR-346800. These documents indicate that the petitioner was indicted for one count of Robbery, in violation of R.C. 2911.02, and he plead guilty to an amended count of Theft, in violation of R.C. 2913.02, and was sentenced to five years imprisonment. A criminal case may be instituted not only by a complaint, but also by an indictment or by information. See Crim.R. 3, 4.1, 6, 7. In this matter, the petitioner was convicted and sentenced upon an indictment. "Any defect by the alleged failure to file criminal complaints is not cognizable in habeas corpus because [petitioner] was convicted and sentenced upon indictments rather than complaints." *Thorton v. Russell* (1998), 82 Ohio St.3d 93, 694 N.E.2d 464, citing *State v. Wac* (1981), 68 Ohio St.2d 84, 428 N.E.2d 428. See, also, *State ex rel. Dozier v. Mack* (1999), 85 Ohio St.3d 368, 708 N.E.2d 712. Therefore, the absence of a criminal complaint is irrelevant and does not void the petitioner's

conviction. Furthermore, habeas corpus is not available to test the validity or sufficiency of an indictment or an amended indictment. *State ex rel. Bragg v. Seidner* (2001), 92 Ohio St.3d 87, 748 N.E.2d 532.

Additionally, the petitioner failed to support his complaint with an affidavit "specifying the details of the claim" as required by Loc.R. 45(B)(1)(a). *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077, unreported and *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899, unreported.

Accordingly, we dismiss this action sua sponte. Petitioner to pay costs.

Writ Dismissed.

TIMOTHY E. McMONAGLE, PRESIDING JUDGE

JAMES D. SWEENEY, J. and

FRANK D. CELEBREZZE, J., CONCUR.