

[Cite as *Nash v. Mason*, 2004-Ohio-1686.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 84250

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|-------------------------|---|-----------------|
| TIMOTHY M. NASH | : | ORIGINAL ACTION |
| | : | |
| Relator | : | JOURNAL ENTRY |
| | : | AND |
| | : | OPINION |
| vs. | : | |
| | : | |
| WILLIAM MASON, CUYAHOGA | : | |
| COUNTY PROSECUTOR | : | |
| | : | |
| Respondent | : | |

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|---------------------------|-------------------------------------|
| DATE OF JOURNALIZATION: | APRIL 1, 2004 |
| CHARACTER OF PROCEEDINGS: | WRIT OF HABEAS CORPUS |
| JUDGMENT: | Writ Dismissed. Order No. 357786 |

APPEARANCES:

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| For Relator: | TIMOTHY M. NASH Inmate No. 460-096 P.O. Box 788 Mansfield, OH 44901 |
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For Respondent:

WILLIAM D. MASON, ESQ.
Cuyahoga County Prosecutor
Assistant County Prosecutor
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

ANNE L. KILBANE, J.

{¶1} Timothy M. Nash avers that the prosecuting attorney for Cuyahoga County, wrongfully procured his indictment. He contends that, despite being released by the police without charges, the prosecuting attorney presented the case to the grand jury, which indicted him. We dismiss this action sua sponte.

{¶2} Nash claims that the prosecuting attorney "circumvented statute and rules promulgated by the Ohio Supreme Court when bringing an indictment against petitioner ***."¹ The Supreme Court of Ohio has clearly determined that a claim challenging the validity or sufficiency of an indictment does not lie in habeas corpus and affirmed the dismissal of an action in habeas corpus.

"Habeas corpus is not available to challenge either the validity, or the sufficiency of an indictment. [Petitioner] Luna possessed an adequate remedy by direct appeal to raise these contentions. (Writ of quo warranto to remove special prosecutor and to void indictments issued by him denied

¹ Petition, ¶3.

where adequate remedy existed by postconviction appeal of trial court's decision overruling motion to dismiss indictments)."²

{¶3} Nash did indeed file an appeal from the entry of judgment finding him guilty and imposing a sentence.³ We are required, therefore, to dismiss the petition because it does not state a claim in habeas corpus.

{¶4} Other grounds for dismissal are present in this action as well. For example, Nash has attached to the petition a copy of the journal entry finding him guilty and imposing a sentence.

"If it appears that a person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or magistrate, or by virtue of the judgment or order of a court of record, and that the court or magistrate had jurisdiction to issue the process, render the judgment, or make the order, the writ of habeas corpus shall not be allowed."⁴

{¶5} Clearly, the journalized entry disposing of the charge against him and imposing a sentence placed him in the custody of the Department of Rehabilitation and Correction. As a consequence, Nash

² *Luna v. Russell*, 70 Ohio St.3d 561, 562, [1994-Ohio-264](#), 639 N.E.2d 1168. (Internal citations omitted.)

³ *State v. Nash*, Cuyahoga App. No. 84044.

⁴ R.C.2725.05.

may not maintain this action in habeas corpus.

{¶6} Furthermore, a petition for a writ of habeas corpus must specify "[t]he officer, or name of the person by whom the prisoner is so confined or restrained ***."⁵ The petition filed by Nash is defective because he named the prosecuting attorney as respondent rather than the person who is holding him in custody which is a sufficient ground for dismissal.⁶

{¶7} Nash's complaint is defective on another ground.

"* * * Additionally, relator 'did not file an R.C. 2969.25(A) affidavit describing each civil action or appeal of a civil action he had filed in the previous five years in any state or federal court and also did not file an R.C. 2969.25(C) certified statement by his prison cashier setting forth the balance in his private account for each of the preceding six months.' As a consequence, we deny relator's claim of indigency and order him to pay costs."⁷

{¶8} Likewise, Nash has failed to support his complaint with the requisite affidavit and supporting information. Not only must we deny his claim of indigency and order him to pay costs, but this

⁵ R.C. 2725.04(B).

⁶ *Jackson v. State*, Cuyahoga App. No. 81007, [2002-Ohio-2024](#), at 3; R.C. 2725.04(B).

⁷ *State ex rel. Bristow v. Sidoti* (Dec. 1, 2000), Cuyahoga App. No. 78708, at 3-4. (Internal citations omitted.)

defect provides another basis for dismissing this action. "The failure to comply with R.C. 2969.25 warrants dismissal of the complaint for a writ of mandamus."⁸

{¶9} Accordingly, we dismiss this action sua sponte. Nash to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

{¶10} The writ is dismissed.

Writ dismissed.

FRANK D. CELEBREZZE, JR., and DIANE KARPINSKI, JJ., concur.

⁸ *State ex rel. Hite v. State*, Cuyahoga App. No. 79734, [2002-Ohio-807](#), at 6. (Internal citations omitted.)