

[Cite as *Bell v. State*, 2004-Ohio-1906.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 84408

SEAN BELL	:	ORIGINAL ACTION
	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
STATE OF OHIO	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION: APRIL 14, 2004

CHARACTER OF PROCEEDINGS: WRIT OF HABEAS CORPUS

JUDGMENT: Writ Granted In Part and  
Denied In Part.  
Order No. 358810

APPEARANCES:

For Relator: RUFUS SIMS  
75 Public Square  
Suite 333  
Cleveland, OH 44113

For Respondent: WILLIAM D. MASON, ESQ.  
Cuyahoga County Prosecutor  
BY: JON W. OEBKER  
Assistant County Prosecutor  
Justice Center - 9<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, OH 44113

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SEAN C. GALLAGHER, J.

{¶1} Petitioner, Sean Bell, is the defendant in *State v. Bell*, Cuyahoga County Court of Common Pleas Case No. CR-448928. The indictment in Case No. CR-448928 contains four counts: domestic violence; felonious assault; and assault on a peace officer (two counts). He is in the custody of the Cuyahoga County sheriff.

{¶2} At his arraignment, the court of common pleas set a \$5,000 bond on the condition that Bell not have contact with the victim. By entry received for filing on March 25, 2004, the court of common pleas scheduled a pretrial and bond hearing for that date.

{¶3} Attached to the petition is a copy of the transcript of that hearing. Bell and his counsel appeared and the court of common pleas observed that, given the charges, the bond was low and increased Bell's bond to \$25,000, cash only. Bell's counsel objected and stated that Bell:

**"\*\*\* [I]s a 22 year old individual with no prior record. He doesn't have any history of violence. He has a history of being employed. He's not a flight risk. He has no passport. He has no reason to leave the Court's jurisdiction."**

{¶4} Tr. 4. No witnesses testified during the hearing.

{¶5} Bell requests that this court grant relief in habeas corpus and reinstate his former \$5,000 bond.

{¶6} In its response, the state concedes that the cash-only limitation on Bell's bond is inappropriate. As a consequence, we

need only consider whether the petition states a claim in habeas corpus with respect to the increased amount of the bond.

{¶7} The standard for considering this action in habeas corpus is well-settled.

"In a habeas corpus action to contest the reasonableness of bond, this court must determine whether the trial court abused its discretion. *In re Gentry* [(1982), 7 Ohio App.3d 143, 454 N.E.2d 987]; *Jenkins v. Billy* (1989), 50 Ohio St.3d 270, 538 N.E.2d 1045; *Lewis v. Telb* (1985), 26 Ohio App.3d 11, 26 OBR 179, 497 N.E.2d 1376."

{¶8} *In re Green* (1995), 101 Ohio App.3d 726, 730, 656 N.E.2d 705 [Eighth Dist.].

{¶9} In *In re Miller v. McFaul* (Sept. 30, 1997), Cuyahoga App. No. 73214, we described the nature of our review of an action in habeas corpus challenging the propriety of the amount of bail before trial.

"A petition for a writ of habeas corpus, which involves a claim of excessive pretrial bail, is a hybrid case which requires either or both appellate and original review. See *State ex rel. Baker v. Troutman* (1990), 50 Ohio St.3d 270; *Jenkins v. Billy* (1989), 50 Ohio St.3d 270; *In re DeFronzo* (1977), 49 Ohio St.3d 271."

{¶10} *Id.* at 1-2. Crim.R. 46(C) sets forth the factors which the court of common pleas is required to consider in determining bail.

{¶11} In *Forgette v. Telb* (June 24, 1998), Lucas App. No. L-98-1197, the municipal court set bond at \$20,000 on each of two counts of felonious assault and the court of common pleas increased the

pretrial bail to \$125,000 on each count. The court of appeals determined that the court of common pleas did not abuse its discretion and denied the defendant's petition for a writ of habeas corpus.

{¶12} In this action, the court of common pleas expressed its concern that, given the nature of the charges, Bell's original bond was low. Tr. at 3-5. Given the severity of the charges against Bell, the court of common pleas had discretion to impose a bond which would ensure his appearance. We cannot conclude that the court of common pleas abused its discretion by increasing petitioner's bail from \$5,000 to \$25,000.

{¶13} We also note that the petition is defective. 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 \*\*\*."

R.C. 2725.04(B). The petition filed by Bell is defective because he named the state as respondent rather than the person who is holding him in custody. Failure to name the custodian is a sufficient ground for dismissal. *Jackson v. State*, Cuyahoga App. No. 81007, 2002-Ohio-2024, at 3; R.C. 2725.04(B).

**\*\*\*\*. Moreover, he failed to include the addresses of the parties as required by Civ.R. 10(A). In *State ex rel. Sherrills v. The State of Ohio* (2001), 91 Ohio St. 3d 133, 742 N.E.2d 651, the Supreme Court of Ohio listed these failures as proper reasons for dismissal of a habeas petition."**

{¶14} *State ex rel. Woods v. State* (May 21, 2001), Cuyahoga

App. No. 79577, unreported, at 2-3.

{¶15} Petitioner has also failed to support his complaint with an affidavit specifying the details of the claim as required by Local Rule 45(B)(1)(a). In the affidavit attached to the petition, Bell's counsel avers that "the statements in the foregoing Application for Writ of Habeas Corpus are true and based on personal knowledge." Counsel's affidavit does not specify "the details of the claim." Failure to provide the requisite details is a basis for dismissal. *State ex rel. Pecsí v. Jones* (Mar. 16, 2000), Cuyahoga App. No. 77464, unreported, at 2-3.

{¶16} Accordingly, in light of the state's concession regarding the impropriety of the restriction on the bond to cash only, we order that petitioner's bond is set at \$25,000. Otherwise, petitioner's request for relief in habeas corpus is denied. Petitioner 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).

{¶17} Writ granted in part and denied in part.

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ANNE L. KILBANE, P.J., and ANN DYKE, J., concur.