

[Cite as *Pruitt v. Kilbane*, 2004-Ohio-3461.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 84606

MICHAEL PRUITT	:	ORIGINAL ACTION
	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
MARY KILBANE, JUDGE, ET AL.	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION: JUNE 21, 2004

CHARACTER OF PROCEEDINGS: WRIT OF HABEAS CORPUS

JUDGMENT: Writ Dismissed.
Order No. 360337

APPEARANCES:

For Relator: EDWIN J. VARGAS
Summers & Vargas Co. LPA
28001 Chagrin Blvd., Suite 300
Cleveland, Ohio 44122

For Respondent: WILLIAM D. MASON, ESQ.
Cuyahoga County Prosecutor
BY: MICHAEL KINNEY
Assistant County Prosecutor
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

JUDGE TIMOTHY E. MCMONAGLE:

{¶1} On May 6, 2004, Michael Pruitt, through counsel, commenced this habeas action against respondents Judge Mary Kilbane and Chief Edward Lohn claiming that he has been held unlawfully on an illegal \$10,000 cash only bond, and in violation of his right to a preliminary hearing. On May 14, 2004, this court, sua sponte, ordered respondent to show cause why this petition should not be dismissed for failure to comply with R.C. 2725.04(D). Thereafter, on May 17, 2004, petitioner demonstrated good cause and supplemented his petition with a copy of the municipal court's journal entry ordering Pruitt into custody and setting a \$10,000 cash only bond. On May 21, 2004, respondents, through the Director of Law for the City of Cleveland, filed a brief in opposition to petition for writ of habeas corpus which this court sua sponte converted to a motion for summary judgment.

{¶2} According to the motion for summary judgment, the Cuyahoga County Grand Jury indicted Pruitt with a four-count indictment. The record further discloses that at arraignment, Pruitt's bond was set at \$100,000, cash, surety or property. Accordingly, Pruitt's request for a writ of habeas corpus is rendered moot.

{¶3} Pruitt also failed to name the correct party respondent. Pruitt named the Judge and Chief of Police rather than the custodian. R.C. 2725.04(B). See also, *State ex rel.*

Sherrills v. State, 91 Ohio St.3d 133, 2001-Ohio-299, 742 N.E.2d 651 (affirming the sua sponte dismissal of a petition for habeas corpus, inter alia, because the petitioner did not name the proper respondents). Accordingly, the motion for summary judgment is granted. 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).

Writ Dismissed.

TIMOTHY E. McMONAGLE
JUDGE

ANNE L. KILBANE, P.J., CONCURS

DIANE KARPINSKI, J., CONCURS