

[Cite as *State ex rel. Jernighan*, 2005-Ohio-5841.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 86845

STATE OF OHIO, EX REL.,	:	ORIGINAL ACTION
TOMMIE JERNINGHAN, JR.	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
GERALD T. MCFAUL	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION: NOVEMBER 3, 2005

CHARACTER OF PROCEEDINGS: WRIT OF HABEAS CORPUS

JUDGMENT: Complaint Dismissed.
Motion No. 375076
Order No. 376426

APPEARANCES:

For Relator: TOMMIE JERNINGHAN JR.
Cuyahoga County Jail
P. O. Box 5600
Cleveland, Ohio 44101

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

JUDGE PATRICIA A. BLACKMON:

{¶ 1} Tommie Jerningham, Jr., has filed a petition for a writ of habeas corpus against Gerald T. McFaul, Cuyahoga County Sheriff. Jerningham claims that the revocation of his probation was improper which requires his release from prison.¹ McFaul has filed a motion to dismiss which we grant for the following reasons.

{¶ 2} Initially, we find that the petition for a writ of habeas corpus is procedurally defective and must be dismissed.

R.C. 2725.04 requires that petitions for habeas corpus be verified. The failure to verify the petition requires its dismissal. *Chari v. Vore* (2001), 91 Ohio St.3d 323, 744 N.E.2d 763 and *State ex rel. Crigger v. Ohio Adult Parole Authority* (1998), 82 Ohio St.3d 270, 695 N.E.2d 254. **In *Vore* the Supreme Court of Ohio was adamant that unverified petitions for habeas corpus be dismissed; it reversed the granting of relief in a habeas petition because it was not verified.** Similarly, the relator failed to support his complaint with an affidavit specifying the details of the claim as required by Local Rule 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. (Emphasis added.)

State ex rel. Woods v. State (May 21, 2001), Cuyahoga App. No. 79577, at 2.

{¶ 3} Herein, Jerningham has not verified the petition for a writ of habeas corpus and has failed to comply with Loc. App.R. 45(B)(1)(a) which mandates that the petition be supported by a

¹Jerningham was sentenced to two years of community control sanctions on April 20, 2004 and not placed on probation pursuant to R.C. 2951.09, R.C. 2951.13, and Crim.R. 32.3.

sworn affidavit. In addition, Jerningham has failed to comply with the requirements of R.C. 2725.04(D) which provides that a copy of the commitment or cause of detention be attached to the petition for a writ of habeas corpus. *Brown v. Rogers* (1995), 72 Ohio St.3d 339, 650 N.E.2d 422; *Bloss v. Rogers* (1992), 65 Ohio St.3d 145, 602 N.E.2d 602; *Sostre v. McFaul* (Mar. 23, 2000), Cuyahoga App. No. 77755. It must also be noted that Jerningham has failed to comply with the mandatory requirements of R.C. 2969.25(A). An inmate, when filing a civil action against a government entity or employee, must file an affidavit which contains a description of each civil action or appeal of a civil action that has been docketed in the previous five (5) years in either state or federal court. *State ex rel. Akbar-El v. Cuyahoga Cty. Court of Common Pleas*, 94 Ohio St.3d 210, 2002-Ohio-475, 761 N.E.2d 624; *State ex rel. Sherrills v. Franklin Cty. Clerk of Courts*, 92 Ohio St.3d 402, 2001-Ohio-211, 750 N.E.2d 94. Accordingly, the petition for a writ of habeas corpus must be dismissed.

{¶ 4} Finally, this court will not issue a writ of habeas corpus if it appears that Jerningham is being held pursuant to the judgment of a court that possesses jurisdiction to revoke his community control sanctions. R.C. 2725.05; *McDonald v. Judge McGinty* (Jan. 24, 2001), Cuyahoga App. No. 79108. Herein, the trial court did possess the jurisdiction to revoke Jerningham's community control sanctions pursuant to R.C. 2929.15(B). Any issues which may be raised as a result of the revocation of

Jerningham's community control sanctions must be raised on appeal.

Habeas corpus may not be employed as a substitute for an appeal. *In re Petition of Brown* (1990), 49 Ohio St.3d 222, 551 N.E.2d 954; *Pollock v. Morris* (1988), 35 Ohio St.3d 117, 518 N.E.2d 1205.

{¶ 5} Accordingly, we grant McFaul's motion to dismiss. Costs to Jerningham. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Petition dismissed.

PATRICIA A. BLACKMON
ADMINISTRATIVE JUDGE

FRANK D. CELEBREZZE, JR., J., CONCURS

SEAN C. GALLAGHER, J., CONCURS