

[Cite as *McIntyre v. Reid*, 2010-Ohio-1581.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94547

CHARLES D. MCINTYRE

PETITIONER

VS.

SHERIFF, BOB REID

RESPONDENT

**JUDGMENT:
PETITION DENIED**

Writ of Habeas Corpus
Motion No. 431032
Order No. 432263

RELEASE DATE: April 6, 2010

FOR PETITIONER

Charles D. McIntyre, pro se
S.O. #89859

Cuyahoga County Jail
P.O. Box 5600
Cleveland, Ohio 44101

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

By: Katherine Mullin
Assistant County Prosecutor
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MARY J. BOYLE, J.:

{¶ 1} Petitioner, Charles D. McIntyre, is the defendant in *State v. McIntyre*, Cuyahoga County Court of Common Pleas Case No. CR-530850. He complains that he was to have participated in the “Parma Pilot Project” but was bound over to the court of common pleas by the Parma Municipal Court. Complaint, at ¶4. He also complains that “early disposition proceedings were negated, and petitioner received a direct indictment on November 20, 2009. Therefore, critical procedural requirements were abrogated, consequently, disturbing personal jurisdiction in the process.” *Id.* at ¶4-5.

{¶ 2} A review of the docket in Case No. CR-530850, however, confirms that McIntyre was indicted November 20, 2009 and also arraigned on November 25, 2009. The manner by which a defendant is accused of a crime is procedural and not jurisdictional. *Gotel v. Gansheimer*, 16 Ohio St.3d 316,

2007-Ohio-6437, 878 N.E.2d 1041, at ¶6. The court of common pleas has the jurisdiction to try, convict and sentence McIntyre. *Boylan v. Bradshaw*, 108 Ohio St.3d 181, 2006-Ohio-549, 842 N.E.2d 49, at ¶5. McIntyre has not, therefore, stated a claim for relief in habeas corpus. See *Sherrod v. McFaul*, Cuyahoga App. No. 87264, 2005-Ohio-6347 (after petitioner appeared in municipal court – where bond was set and he was bound over to the grand jury – and then he was indicted and arraigned in the court of common pleas, his claim in habeas corpus was moot). As a consequence, respondent’s motion for summary judgment is well-taken and we enter judgment for respondent.

{¶ 3} The petition and supporting materials also have several defects. McIntyre did not attach to the petition a “copy of the commitment or cause of detention” as required by R.C. 2725.04(D). A copy of the docket is not sufficient. *Henderson v. Shaffer*, Cuyahoga App. No. 94485, 2010-Ohio-915.

{¶ 4} Although McIntyre attaches an “Affidavit Under Loc.R. 45(B)”, an “Affidavit of Verity”, and an “Affidavit of Prior Civil Action” to the petition, none of these purported “affidavits” is notarized. As a consequence, McIntyre also did not verify the petition as required by R.C. 2725.04 and the petition is not supported with an affidavit specifying the details of the claim as required by Loc.App.R. 45(B)(1)(a). Any one of these grounds would be a sufficient

basis for dismissing this action. *Casey v. Shaffer*, Cuyahoga App. No. 94541, 2010-Ohio-369.

{¶ 5} Defects in the complaint or petition commencing an original action, as well as in the requisite supporting materials, provide a sufficient basis for disposing of the action. See, e.g., *State ex rel. Leon v. Cuyahoga Cty. Common Pleas Court*, 123 Ohio St.3d 124, 2009-Ohio-4688, 914 N.E.2d 402; *Martin v. Woods*, 121 Ohio St.3d 609, 2009-Ohio-1928, 906 N.E.2d 1113. “By so holding, we need not address the merits * * *” of McIntyre’s petition. *Leon*, supra, at ¶2.

{¶ 6} Accordingly, respondent’s 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).

{¶ 7} Petition denied.

MARY J. BOYLE, JUDGE

SEAN C. GALLAGHER, A.J., and
MARY EILEEN KILBANE, J., CONCUR

