

[Cite as *Casey v. Shaffer*, 2010-Ohio-369.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94541

PATRICIA CASEY

RELATOR

VS.

WARDEN SHAFFER

RESPONDENT

**JUDGMENT:
PETITION DISMISSED**

Writ of Habeas Corpus
Motion No. 430539
Order No. 430417

RELEASE DATE: February 1, 2010

FOR RELATOR

Patricia Casey, pro se
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ATTORNEYS FOR RESPONDENT

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By: Kristen L. Sobieski
Assistant County Prosecutor
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SEAN C. GALLAGHER, A.J.:

{¶ 1} On January 20, 2010, the petitioner, Patricia Casey, commenced this habeas corpus action against the respondent, Warden Shaffer of the Cuyahoga County Jail, to compel her immediate release. She argues that the underlying complaint was defective under the Criminal Rule, because, inter alia, it did not state sufficient facts. Thus, the subsequent indictments are defective and failed to vest the trial court with jurisdiction. She also asserts her innocence. For the following reasons, this court dismisses the petition for a writ of habeas corpus, sua sponte.

{¶ 2} First, the petition is fatally defective. R.C. 2725.04(D) requires a habeas corpus petitioner to include a copy of the commitment or cause of detention. Casey attached only a copy of a complaint summary. This is insufficient.

{¶ 3} R.C. 2725.04 further requires the petition to be verified. In *Chari v. Vore*, 91 Ohio St.3d 323, 2001-Ohio-49, 744 N.E.2d 763, the Supreme Court of Ohio ruled: “‘Verification’ means a ‘formal declaration made in the presence of an authorized officer, such as a notary public, by which one swears to the truth of the statement in the document.’ Garner, Black’s Law Dictionary (7 Ed.1999) 1556 ***.” Casey attaches an “affidavit” with her petition at the end of which she states per Title 28 U.S.C. §1746 that her statements were made under penalty of perjury. However, it is not notarized. Therefore, it is insufficient to be a proper verification or affidavit under Ohio law. *Griffin v. McFaul*, 116 Ohio St.3d 30, 2007-Ohio-5506, 876 N.E.2d 527. Loc.App.R. 45(B)(1)(a) requires all complaints for original actions, including habeas corpus, to be supported by an affidavit specifying the details of the claim. Because the “affidavit” is not properly notarized, it does not fulfill the rule’s requirement and provides an additional reason for dismissal. *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077 and *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899.

{¶ 4} Casey also did not comply with R.C. 2969.25(C), which requires that an inmate file a certified statement from the prison cashier setting forth the balance in the petitioner's private account for each of the preceding six months. This also is sufficient reason to deny the petition, deny indigency status, and assess costs against her. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842; *Griffin v. McFaul*, supra; and *State ex rel. Hunter v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 176, 2000-Ohio-285, 724 N.E.2d 420. Accordingly, the many pleading deficiencies warrant dismissal.

{¶ 5} Moreover, Casey's claims for relief are meritless. She claims that the indictments are fatally defective, because the underlying complaints were improper under Criminal Rules 3 and 5, because they fail to state the necessary scienter element, and because she is innocent. However, habeas corpus is not the remedy for challenging the sufficiency of an indictment. *State ex rel. Hadlock v. McMackin* (1991), 61 Ohio St.3d 433, 575 N.E.2d 184.; *State ex rel. Simpson v. Lazaroff*, 75 Ohio St.3d 571, 1996-Ohio-201, 664 N.E.2d 937; and *Marshall v. Lazaroff*, 77 Ohio St.3d 443; 1997-Ohio-257, 674 N.E.2d 1378 - allegations of fraud by the prosecutor relating to an indictment are not cognizable in habeas corpus. Furthermore, the sufficiency of the indictment does not relate to the jurisdiction of the trial court. *Kroger v. Engle* (1978), 53 Ohio St.2d 165, 373

N.E.2d 383. A trial on the merits is the proper forum for determining guilt or innocence, not a habeas corpus action.

{¶ 6} Casey also filed what she titled as an “Action for Declaratory Judgment.” In this she asserts that the bad faith actions of the trial judge, the prosecutor, and her attorney in bringing an ill-founded indictment and depriving her of her constitutional rights entitle her to substantial money damages. However, her reliance on federal law is misplaced. Title 28 U.S.C. §2201 and §2202 vest United States District Courts with jurisdiction to hear declaratory judgment actions and to award damages therein, but those sections have no application to Ohio Courts of Appeals. Instead, Ohio Courts of Appeal have no jurisdiction over claims for declaratory judgment. *State ex rel. Ministerial Day Care Assoc. v. Zelman*, 100 Ohio St.3d 347, 2003-Ohio-6447, 800 N.E.2d 21 and *State ex rel. McGrath v. Ohio Adult Parole Auth.*, 100 Ohio St.3d 72, 2003-Ohio-5062, 796 N.E.2d 526.

{¶ 7} Accordingly, this court sua sponte dismisses Casey’s petition for a writ of habeas corpus and denies her action for declaratory judgment. Casey to pay costs. The court further orders the Clerk of the Eighth District Court of Appeals to serve notice of this judgment upon all parties as required by Civ.R. 58(B).

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

ANN DYKE, J., and
MARY J. BOYLE, J., CONCUR