

[Cite as *Nash v. Reid*, 2010-Ohio-3735.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95031

TIMOTHY M. NASH

PETITIONER

VS.

BOB REID, SHERIFF

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Habeas Corpus
Motion Nos. 433709 and 433841
Order No. 436064

RELEASE DATE: August 11, 2010

FOR RELATOR

Timothy M. Nash, pro se
#100766
P.O. Box 5600
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ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

By: Katherine Mullin
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

MARY EILEEN KILBANE, P. J.:

{¶ 1} Petitioner, Timothy M. Nash, is the defendant in *State v. Nash*, Cuyahoga Cty. Court of Common Pleas Case No. CR-536046. He contends that respondent sheriff illegally has custody over Nash.

{¶ 2} “Plaintiff declares that it is a fact of records that Cuyahoga County Courts were and are without legal authority or jurisdiction over my person to try or convict me Timothy M Nash, when the investigator [a police officer] has committed an act of perjury by creating an affidavit/complaint when not being a victim or eyewitness in order to cause the illegal restraint of plaintiff * * *.” Petition, at ¶5. Nash also avers that the victim “does not

exist or has not filed her allegations.” *Id.* (capitalization and punctuation in original).

{¶ 3} “Habeas corpus is not available to challenge the validity of a charging instrument. *McCuller v. Hudson*, 121 Ohio St.3d 168, 2009-Ohio-721, 902 N.E.2d 979, ¶ 1.” *Schroyer v. Banks*, 123 Ohio St.3d 88, 2009-Ohio-4080, 914 N.E.2d 368, ¶1. Additionally, Nash has a remedy other than habeas corpus. “A defendant may challenge the sufficiency of the indictment only by a direct appeal, and not through habeas corpus. *State v. Wozniak* (1961), 172 Ohio St. 517, 522-523, 18 O.O.2d 58, 61, 178 N.E.2d 800, 804.” *State ex rel. Hadlock v. McMackin* (1991), 61 Ohio St.3d 433, 434, 575 N.E.2d 184.

{¶ 4} In this action, Nash attempts to seek release from custody on the basis that the initial complaint and indictment are insufficient. He may raise these issues in Case No. CR-536046 and contest any adverse judgment on appeal. As a consequence, respondent’s argument in his motion for summary judgment that the petition lacks substantive merit is well-taken.

{¶ 5} We also note that the petition is not verified as required by R.C. 2725.04, is not supported with an affidavit specifying the details of the claim as required by Loc.App.R. 45(B)(1)(a) and is not supported with an R.C. 2969.25(A) affidavit describing each civil action or appeal of a civil action

which Nash had filed in the previous five years in any state or federal court. Any one of these grounds would be a sufficient basis for dismissing this action. See, e.g.: *Casey v. Shafer*, Cuyahoga App. No. 94541, 2010-Ohio-369; *Johnson v. McFaul*, Cuyahoga App. No. 86153, 2005-Ohio-1663, at ¶4-7.

{¶ 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).

Writ denied.

MARY EILEEN KILBANE, PRESIDING JUDGE

MELODY J. STEWART, J., and
MARY J. BOYLE, J., CONCUR