

[Cite as *State ex rel. Campbell v. Russo*, 2010-Ohio-4369.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95463

**STATE OF OHIO, EX REL.
LOUIS CAMPBELL**

RELATOR

VS.

JUDGE NANCY RUSSO, ET AL.

RESPONDENTS

**JUDGMENT:
WRIT DENIED**

Writ of Habeas Corpus
Motion No. 436192
Order No. 437233

RELEASE DATE: September 13, 2010

FOR RELATOR

Louis Campbell, pro se
Inmate #123306
Cuyahoga County Jail
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ATTORNEYS FOR RESPONDENTS

William D. Mason
Cuyahoga County Prosecutor

By: Matthew E. Meyer
Assistant County Prosecutor
8th Floor Justice Center
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MARY EILEEN KILBANE, J.:

{¶ 1} Petitioner, Louis Campbell, is the defendant in *State v. Campbell*, Cuyahoga Cty. Court of Common Pleas Case No. CR-538673. The parties agree that respondent Judge Nancy Margaret Russo arraigned Campbell and that Case No. CR-538673 is assigned to respondent Judge Stuart A. Friedman.

{¶ 2} Campbell complains that the court of common pleas did not hold a preliminary hearing within ten days of his initial appearance and contends that respondents violated his right to a speedy trial. He requests that this court issue

a writ of habeas corpus requiring his release from custody and dismissal of Case No. CR-538673.

{¶ 3} Respondents have filed a motion for summary judgment, but have not supported the motion with additional evidentiary material. They argue that: habeas corpus is inappropriate for speedy trial challenges; various defects in the petition require dismissal; and Campbell did not name the proper respondents in the petition. Campbell has opposed the motion and filed a motion for leave to amend the petition to add the sheriff and the former warden of the county jail as respondents. Respondents have not responded to the motion for leave to amend the petition.

{¶ 4} An action in habeas corpus challenges the propriety of custody. See R.C. 2725.01. The parties do not dispute that Campbell is in custody at the Cuyahoga County Jail. As a consequence, by separate entry, we have granted Campbell's motion for leave to amend the petition in part to add the sheriff, Bob Reid, as a respondent to this action because he is the current custodian. We denied Campbell's request to add a "former" warden as a respondent, however. The pending motion for summary judgment provides an adequate basis for adjudicating this action with regard to all respondents, including the sheriff.

{¶ 5} Initially, we note that, because Campbell is in the custody of the sheriff, Judges Russo and Friedman are not appropriate respondents in a habeas corpus action. *Petway v. McFaul* (Apr. 26, 2001), Cuyahoga App. No. 79254, at

2. Accordingly, respondents' motion for summary judgment is granted in favor of Judges Russo and Friedman.

{¶ 6} Campbell's fundamental claim is that he did not receive a preliminary hearing. "[A]ny claim which [petitioner] may have that he is entitled to habeas corpus relief because he did not receive a preliminary hearing is moot because the grand jury indicted him." *Byrd v. McFaul*, Cuyahoga App. No. 89978, 2007-Ohio-4166, ¶5, citing *Clarke v. McFaul*, Cuyahoga App. No. 89436, 2007-Ohio-1592, ¶6. The docket in Case No. CR-538673 reflects that, at Campbell's initial appearance on June 16, 2010, the court of common pleas scheduled a preliminary hearing for June 24, 2010. The docket also reflects that he was indicted on June 24, 2010. In light of the well-established holding in *Byrd* and *Clarke*, respondents are entitled to judgment in their favor.

{¶ 7} Campbell also alludes to a speedy trial claim. "Habeas corpus is not the remedy for litigating speedy trial issues. *Jackson v. Wilson*, 100 Ohio St.3d 315, 2003-Ohio-6112, 789 N.E.2d 1086; and *State ex rel. Brantley v. Ghee* (1987), 80 Ohio St.3d 287, 685 N.E.2d 1243." *Canon v. Shaffer*, Cuyahoga App. No. 94588, 2010-Ohio-538, ¶5. To the extent that Campbell is asserting a speedy trial claim, respondents are also entitled to judgment.

{¶ 8} Campbell's petition also has several defects. He has failed to attach a copy of the commitment papers as required by R.C. 2725.04(D). It is

well-established that attaching a copy of pages from the docket is not sufficient. *Jones v. Reid*, Cuyahoga App. No. 94694, 2010-Ohio-2234.

{¶ 9} R.C. 2725.04 also requires that the petitioner verify the petition. Campbell's petition contains what he calls an "affidavit," but the "affidavit" is not notarized. It is well-established that a verification must be notarized. *Griffin v. McFaul*, 116 Ohio St.3d 30, 2007-Ohio-5506, 876 N.E.2d 527, ¶4.

{¶ 10} We also note that the petition 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 Campbell 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. Shaffer*, Cuyahoga App. No. 94541, 2010-Ohio-369; *Johnson v. McFaul*, Cuyahoga App. No. 86153, 2005-Ohio-1663, at ¶¶4-7.

{¶ 11} Campbell asserts, however, that this court should not require an affidavit because notary services are not available to him in the Cuyahoga County Jail. He has not, however, provided this court with any controlling authority which exempts him from the requirement that he provide notarized affidavits.

{¶ 12} Accordingly, respondents' 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 KILLBANE, JUDGE

SEAN C. GALLAGHER, A.J., and
LARRY A. JONES, J., CONCUR