

[Cite as *Whitman v. Shaffer*, 2010-Ohio-532.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94540

WILLIAM WHITMAN

RELATOR

VS.

WARDEN SHAFFER

RESPONDENT

**JUDGMENT:
PETITION DISMISSED**

Writ of Habeas Corpus
Motion Nos. 430488, 430489, and 430490
Order No. 430745

RELEASE DATE: February 17, 2010

FOR RELATOR

William Whitman, pro se
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ATTORNEY FOR RESPONDENT

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MELODY J. STEWART, J.:

{¶ 1} On January 20, 2010, petitioner, William Whitman, filed his second petition for writ of habeas corpus. Whitman, the defendant in *State v. Whitman*, Cuyahoga County Court of Common Pleas Case No. CR-458986, asks this court to issue the writ claiming the trial court lacked jurisdiction to accept his plea on January 9, 2009. On January 21, 2010, Whitman filed a motion for summary judgment and a motion for declaratory judgment. Whitman filed a second motion for summary judgment on January 22, 2010. For the following reasons, we deny the motions for summary judgment and the motion for declaratory judgment, and sua sponte dismiss this matter.

{¶ 2} The failure of a petitioner to satisfy the procedural requirements in filing an extraordinary writ subjects the writ to dismissal. *State ex rel. Leon v.*

Cuyahoga Cty. Court of Common Pleas, 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. In Whitman's filing, we note several defects that prevent petitioner from maintaining an action in habeas corpus.

{¶ 3} First, R.C. 2725.04 requires that petitions for habeas corpus be verified. We further note that the Supreme Court of Ohio is adamant that unverified petitions for habeas corpus be dismissed. *Chari v. Vore*, 91 Ohio St.3d 323, 2001-Ohio-49, 744 N.E.2d 763; *State ex rel. Crigger v. Ohio Adult Parole Auth.*, 82 Ohio St.3d 270, 1998-Ohio-239, 695 N.E.2d 254; *State ex rel. Williams v. Corrigan*, Cuyahoga App. No. 87150, 2005-Ohio-6092; *State ex rel. Woods v. State* (May 21, 2001), Cuyahoga App. No. 79577. Whitman's failure to attach an affidavit that is sworn before a notary requires dismissal. *Morris v. Bur. of Sentence Computation*, Cuyahoga App. No. 89517, 2007-Ohio-1444; *State ex rel. McKay v. Corrigan*, Cuyahoga App. No. 88340, 2006-Ohio-4775.

{¶ 4} Whitman also failed to comply with the mandatory requirements of R.C. 2725.04(D), which requires that a copy of the commitment papers be attached to the petition for a writ of habeas corpus. The failure to attach the commitment papers causes the petition to be fatally defective. *Brown v. Rogers*, 72 Ohio St.3d 339, 1995-Ohio-72, 650 N.E.2d 422; *Cornell v. Schotten*, 69 Ohio St.3d 466, 1994-Ohio-74, 633 N.E.2d 1111; *Bloss v. Rogers* (1992), 65 Ohio St.3d 145, 602 N.E.2d 602.

{¶ 5} We further note that Whitman failed to comply with R.C. 2969.25, which requires the attachment of an affidavit describing each civil action or appeal filed by the relator within the previous five years in any state or federal court. *State ex rel. Zanders v. Ohio Parole Board*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594; *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242; *In Re: Woods* (Apr. 26, 2001), Cuyahoga App. No. 79467; *Clark v. State* (May 17, 2001), Cuyahoga App. No. 79584.

{¶ 6} Accordingly, in light of the recent decisions of the Supreme Court of Ohio, we deny Whitman's motions for summary judgment and declaratory judgment, and sua sponte dismiss the petition. Relator to bear costs. 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.

MELODY J. STEWART, PRESIDING JUDGE

LARRY A. JONES, J., and
COLLEEN CONWAY COONEY, J., CONCUR

