

[Cite as *McMullough v. Shaffer*, 2010-Ohio-685.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94543

MYRON MCCULLOUGH

PETITIONER

VS.

WARDEN SHAFFER

RESPONDENT

**JUDGMENT:
PETITION DISMISSED**

Writ of Habeas Corpus
Motion No. 430761
Order No. 430838

RELEASE DATE: February 23, 2010

FOR PETITIONER

Myron McCullough, pro se
#280179
Cuyahoga County Jail
P.O. Box 5600
Cleveland, Ohio 44101

ATTORNEY FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

JAMES J. SWEENEY, J.:

{¶ 1} Myron McCullough, the petitioner, has filed a petition for a writ of habeas corpus. Warden Shaffer, the respondent, has filed a motion to dismiss and a motion for summary judgment, which shall be treated solely as a motion to dismiss. For the following reasons, we grant the motion to dismiss.

{¶ 2} McCullough's petition for a writ of habeas corpus is procedurally defective for the following reasons:

{¶ 3} (1) petition fails to contain a sworn and notarized affidavit that complies with Loc.App.R. 45(B)(1)(a);

{¶ 4} (2) petition fails to contain a sworn and notarized affidavit of indigency;

{¶ 5} (3) petition fails to contain a statement that sets forth balance in inmate's account for the preceding six months and/or all of the cash and things of value owned by the inmate, as required by R.C. 2969.25;

{¶ 6} (4) petition fails to contain a sworn and notarized affidavit that describes each civil action or appeal filed within the previous five years in any state or federal court; and

{¶ 7} (5) petition fails to contain copies of all pertinent commitment papers as required by R.C. 2725.04(D).

{¶ 8} See, *Tisdale v. Eberlin*, 114 Ohio St.3d 201, 2007-Ohio-3833, 870 N.E.2d 1191; *Chari v. Vore*, 91 Ohio St.3d 323, 2001-Ohio-49, 744 N.E.2d 763. See, also, *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; *Humphrey v. Ohio Water Parks, Inc.* (1994), 97 Ohio App.3d 403, 646 N.E.2d 908; *State ex rel. Davis*, Cuyahoga App. No. 90533, 2008-Ohio-584; *Morris v. Bureau of Sentence Computation*, Cuyahoga App. No. 89517, 2007-Ohio-1444; *State ex rel. McKay v. Corrigan*, Cuyahoga App. No. 88340.

{¶ 9} It must also be noted that McCullough's petition fails to state a claim upon which relief can be granted. Habeas corpus is not available to challenge the validity of a charging instrument. *Shroyer v. Banks*, 123 Ohio St.3d 88,

2009-Ohio-4080, 914 N.E.2d 368; *McCuller v. Hudson*, 121 Ohio St.3d 168, 2009-Ohio-721, 902 N.E.2d 979.

{¶ 10} Accordingly, we dismiss McCullough's petition for a writ of habeas corpus. Costs to McCullough. 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.

JAMES J. SWEENEY, JUDGE

KENNETH A. ROCCO, P.J., and
CHRISTINE T. MCMONAGLE, J., CONCUR