

[Cite as *Henderson v. Shaffer*, 2010-Ohio-915.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94485

PAUL HENDERSON

RELATOR

VS.

WARDEN SHAFFER

RESPONDENT

**JUDGMENT:
PETITION DENIED**

Writ of Habeas Corpus
Motion Nos. 430423, 430424, 430396, and 430326
Order No. 430653

RELEASE DATE: March 9, 2010

FOR RELATOR

Paul S. Henderson, pro se
Inmate # 88969
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ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

By: Kristen L. Sobieski
Assistant County Prosecutor
8th Floor Justice Center
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KENNETH A. ROCCO, J.:

{¶ 1} On January 8, 2010, the petitioner, Paul Henderson, commenced this habeas corpus action against the respondent, Warden Shaffer of the Cuyahoga County Jail, to compel his immediate release. He argues that the underlying complaint was defective under the Criminal Rules, because, inter alia, it did not state sufficient facts. Thus, the subsequent indictments are defective and failed to vest the trial court with jurisdiction. He also asserts his innocence. On January 19, 2010, the respondent, through the Cuyahoga County Prosecutor, moved for summary judgment. Henderson replied by filing two motions for summary judgment on January 22, 2010, and a reply to the respondent's motion

for summary judgment on January 29, 2010. For the following reasons, this court denies Henderson's motions for summary judgment and grants the respondent's dispositive motion.

{¶ 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. Henderson attached copies of his indictments, the docket, and a complaint summary. These are insufficient. Compliance with R.C. 2725.04(D) requires attachment of the journal entry causing petitioner's detention, and a copy of the docket is not sufficient. *Wilson v. Kochevar*, Cuyahoga App. No. 84516, 2004-Ohio-2984.

{¶ 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 ***." Henderson attached an "affidavit" with his petition at the end of which he stated per Title 28 U.S.C. §1746 that his 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} Henderson has also failed to comply with R.C. 2969.25, which requires an affidavit that describes each civil action or appeal filed by the petitioner within the previous five years in any state or federal court. His failure to comply with R.C. 2969.25 warrants dismissal of the petition. *State ex rel. Zanders v. Ohio Parole Board*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594 and *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242. He 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 him. *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 County 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, Henderson's claims for relief are meritless. He 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 he 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 review of the attached indictments shows that each contains a scienter element. A trial on the merits is the proper forum for determining guilt or innocence, not a habeas corpus action.

{¶ 6} Henderson also filed what he titled as an "Action for Declaratory Judgment." In this he asserts that the bad faith actions of the trial judge, the prosecutor, and his attorney in bringing an ill-founded indictment and depriving him of his constitutional rights entitle him to substantial money damages. However, his 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 Appeals 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 grants the respondent's motion for summary judgment and denies Henderson's petition for a writ of habeas corpus and denies his action for declaratory judgment. Henderson 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).

KENNETH A. ROCCO, PRESIDING JUDGE

PATRICIA A. BLACKMON, J., and
JAMES J. SWEENEY, J., CONCUR