

[Cite as *Turner v. Cuyahoga Cty. Sheriff*, 2014-Ohio-4695.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101689

JOHN L. TURNER, JR.

PETITIONER

vs.

CUYAHOGA COUNTY SHERIFF, ET AL.

RESPONDENTS

**JUDGMENT:
WRIT DENIED**

Writ of Habeas Corpus
Motion No. 477018
Order No. 479115

RELEASE DATE: October 21, 2014

FOR RELATOR

John L. Turner, Jr.
#0110662
Cuyahoga County Jail
P.O. Box 5600
Cleveland, OH 44101

ATTORNEYS FOR RESPONDENTS

Timothy J. McGinty
Cuyahoga County Prosecutor
BY: James E. Moss
Assistant Prosecuting Attorney
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, OH 44113

SEAN C. GALLAGHER, J.:

{¶1} On July 21, 2014, the petitioner, John L. Turner, Jr., commenced this habeas corpus action against the respondents, the Cuyahoga County Sheriff and the Cuyahoga County Prosecutor. Turner claims that he is being unlawfully deprived of his liberty because (1) there was a lack of evidence to indict him in the underlying case, *State v. Turner*, Cuyahoga C.P. No. CR-13-576006-A; (2) his speedy trial rights have been denied; (3) the state has not disclosed exculpatory evidence; (4) there was no preliminary hearing; (5) the state has overcharged him; and (6) the Adult Parole Authority improperly detained him and prevented him from making appearances in the underlying case. On July 23, 2014, the respondents moved for summary judgment on the grounds of procedural defects and failing to state a claim for habeas relief. On August 1, 2014, Turner filed a brief in opposition to the respondents' dispositive motion, and on August 7, 2014, he filed an "affidavit of claim of illegality." For the following reasons, this court grants the respondents' motion for summary judgment and denies the petition for a writ of habeas corpus.

{¶2} 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 nothing, except the sheriff's notice to inmates that the corrections center will no longer provide a notary to witness legal documents. *Wilson v. Kochevar*, 8th Dist. Cuyahoga 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, 744 N.E.2d 763 (2001), 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 * * *.” The Supreme Court of Ohio then reversed the court of appeals’ granting of the habeas writ and awarding of relief and held that the cause should have been summarily dismissed because the petition was procedurally defective. Turner filed an “affidavit of claim of illegality” in which he stated per 28 U.S.C. 1746 that his statements were made under penalty of perjury. However, it was 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. The failure to fulfill the statutory requirements is dispositive.

{¶4} 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. Leon v. Cuyahoga Cty. Court of Common Pleas*, 123 Ohio St.3d 124, 2009-Ohio-4688, 914 N.E.2d 402; and *State ex rel. Wilson v. Calabrese*, 8th Dist. Cuyahoga No. 70077 1996 Ohio App. LEXIS 6213 (Jan. 18, 1996).

{¶5} Turner 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 Bd.*, 82 Ohio St.3d 421, 696 N.E.2d 594 (1998), and *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 685 N.E.2d 1242 (1997). 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. His "poverty affidavit" also is not notarized. 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, supra*; and *State ex rel. Hunter v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 176, 724 N.E.2d 420 (2000). The many pleading deficiencies warrant dismissal.

{¶6} Accordingly, this court grants the respondents' motion for summary judgment and denies the application for a writ of habeas corpus. Petitioner to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶7} Petition denied.

SEAN C. GALLAGHER, JUDGE

LARRY A. JONES, SR., P.J., and
TIM McCORMACK, J., CONCUR