

[Cite as *Turner v. O'Shea*, 2015-Ohio-3356.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103019

JOHN L. TURNER, JR.

PETITIONER

vs.

MICHAEL O'SHEA PROSECUTOR

RESPONDENT

JUDGMENT:
PETITION DISMISSED

Writ of Habeas Corpus
Motion No. 486358
Order No. 487718

RELEASE DATE: August 14, 2015

FOR RELATOR

John L. Turner, Jr., pro se
Lake County Jail
104 E. Erie Street
Painesville, Ohio 44077

ATTORNEY FOR RESPONDENT

Andrew D. Bemer, Director
Rocky River Law Department
21012 Hilliard Blvd.
Rocky River, Ohio 44116

MELODY J. STEWART, J.:

{¶1} On May 12, 2015, the petitioner, John L. Turner, Jr., commenced this habeas corpus action against the respondent, the city of Rocky River Prosecutor Michael O'Shea. The gravamen of Turner's complaint is that the use of a GPS tracker to incriminate him for the underlying misdemeanor offenses so violates his constitutional rights to due process and search and seizure that he should be released on personal bail or that the charges against him should be dropped.¹ On June 9, 2015, the prosecutor moved to dismiss, inter alia, because he is not the proper respondent, because Turner failed to attach his commitment papers, and because search and seizure claims are not remediable in habeas corpus. Turner never filed a response. For the following reasons, this court grants the prosecutor's motion to dismiss and dismisses this petition for a writ of habeas corpus.

{¶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. Turner attached nothing to fulfill this requirement, much less the journal entry causing his detention. *Wilson v. Kochevar*, 8th Dist. Cuyahoga No. 84516, 2004-Ohio-2984.

¹In the underlying cases, *State of Ohio/City of Rocky River v. Turner*, Rocky River M.C. Nos. 14 CRB 1651 - 1656, Turner faces charges of theft and criminal damaging. Turner was wearing a GPS tracker as a condition of parole at that time.

{¶3} Moreover, Prosecutor O'Shea is not a proper respondent in a habeas corpus action. The writ will lie only against the individual who is directly responsible for keeping the petitioner in custody, such as the warden or jailer. A prosecutor is not such an individual. *Davis v. Wilson*, 100 Ohio St.3d 269, 2003-Ohio-5898, 798 N.E.2d 379.

{¶4} Non-jurisdictional claims, such as search and seizure issues, are not cognizable in habeas corpus. *Davie v. Edwards*, 80 Ohio St.3d 170, 685 N.E.2d 228 (1997), and *Cammon v. Brigano*, 101 Ohio St.3d 133, 2004-Ohio-316, 802 N.E.2d 656.

{¶5} Accordingly, this court grants the respondent's motion to dismiss and dismisses this petition 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).

{¶6} Petition dismissed.

MELODY J. STEWART, JUDGE

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