

[Cite as *State v. Pinkney*, 2016-Ohio-7619.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104845

**STATE OF OHIO, EX REL.
AMIR J. TAUWAB**

PETITIONER

vs.

SHERIFF CLIFFORD PINKNEY

RESPONDENT

**JUDGMENT:
PETITION DISMISSED**

Writ of Habeas Corpus
Motion No. 499260
Order No. 500533

RELEASE DATE: October 28, 2016

FOR PETITIONER

Amir J. Tauwab, pro se
Inmate No. 0160506
Cuyahoga County Jail
P.O. Box 5600
Cleveland, Ohio 44101

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Mary McGrath
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

TIM McCORMACK, J.:

{¶1} On August 16, 2016, the petitioner, Amir Tauwab, commenced this habeas corpus petition against the respondent, Sheriff Clifford Pinkney, to compel his release from the Cuyahoga County Jail. Tauwab maintains that in August 2013, he pled guilty to one count of theft in *State v. Tauwab*, Cuyahoga C.P. No. CR-13-572033-A, and the court imposed a suspended sentence of six months and three years of community control.

Tauwab continues that in 2015, he pled no contest to one count of theft and received a sentence of six months. When he was released from prison on February 10, 2016, Sheriff Pinkney immediately took him into custody for a probation violation in Case No. CR-13-572033-A, and he has remained in custody since that day. He concludes by arguing that habeas corpus will issue to obtain his release because the no contest plea could not be used to hold him on a probation violation and because he has already served the maximum six-month sentence for Case No. CR-13-572033-A. On August 19, 2016, the sheriff moved to dismiss. Tauwab never filed a response. For the following reasons, this court grants the sheriff's dispositive motion and dismisses Tauwab's petition for habeas corpus.

{¶2} First, the petition is fatally defective. R.C. 2725.04(D) requires a habeas corpus petitioner to attach all his commitment papers, a procedural deficiency that is fatal to a habeas corpus petition. *State ex rel. Jackson v. Sloan*, Slip Opinion No. 2016-Ohio-5106. Tauwab attached no papers of commitment. In the present case, the

failure to attach all the commitment papers is particularly telling. A review of the docket in Case No. CR-13-572033-A shows that on August 4, 2016, the trial court issued a journal entry that provided as follows: “Per notification from the sheriff’s record department — defendant has served (180) day sentence on 8-7-16. Defendant ordered released from jail on this case only on 8-07-16.” The review of the docket also shows that the petitioner is being held on another case under the alias of Bruce Brown for counts of grand theft, forgery, and tampering with evidence. Bond has been set at \$10,000. *State v. Brown*, Cuyahoga C.P. No. CR-16-603573-A.

{¶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 * * *.” The Supreme Court of Ohio then reversed the court of appeals’ granting of the writ and awarding of relief and held that the cause should have been summarily dismissed because the petition was procedurally defective. Tauwab included an “affirmative declaration” in his petition in which he stated per 28 U.S.C. 1746 that his statements were made under penalty of perjury and true and correct. 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.

{¶4} Similarly, Tauwab 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. Tauwab lists cases he has filed in the last five years, but there is no notarization. The petitioner's 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, 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. Petitioner also did not comply with R.C. 2969.25(C), which requires that an inmate file a certified statement from his prison cashier setting forth the balance in his private account for each of the preceding six months. This also is sufficient reason to deny the petition for habeas corpus, deny indigency status and assess costs against the petitioner. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842; *State ex rel. Hunter v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 176, 2000-Ohio-285, 724 N.E.2d 420; and *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378 — the defect may not be cured by subsequent filings.

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

TIM McCORMACK, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
MELODY J. STEWART, J., CONCUR