

[Cite as *State v. Lopez*, 2017-Ohio-1377.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105200

STATE OF OHIO

RESPONDENT

vs.

JOHNATHAN GALDEROS LOPEZ

PETITIONER

JUDGMENT:
PETITION DISMISSED

Writ of Habeas Corpus
Motion No. 502464
Order No. 505255

RELEASE DATE: April 11, 2017

FOR PETITIONER

Johnathan Galderos Lopez, pro se
Inmate No. X44411
Cross City Correctional Institution
568 N.E. 255th Street
Cross City, Florida 32628

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: Anthony Thomas Miranda
Assistant County Prosecutor
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

LARRY A. JONES, SR., P.J.:

{¶1} Johnathan Galderos Lopez has filed a petition for a “writ of habeas corpus ad prosequendum.” Lopez alleges that there exists, against him, pending criminal charges within Cuyahoga County for the offenses of burglary, breaking and entering, and petty theft. Specifically, Lopez alleges that the pending charges are restricting programs available at a Florida correctional institution, where he is currently incarcerated, and he requests “final disposition” of the criminal charges pending in Cuyahoga County. The Cuyahoga County prosecutor has filed a motion to dismiss, which we grant for the following reasons.

{¶2} Initially, we find that Lopez has failed to state a claim upon which relief can be granted. For a court to grant a motion to dismiss for failure to state a claim, it must appear beyond doubt that the petitioner can prove no set of facts in support of the claim that would entitle relief. *Jenkins v. McKeithen*, 395 U.S. 411, 89 S.Ct. 1843, 23 L.Ed.2d 404 (1969); *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 532 N.E.2d 753 (1988); *O’Brien v. Univ. Community Tenants Union*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975).

{¶3} A “writ of habeas corpus ad prosequendum” is employed by the government of the United States to secure the presence in federal court of a prisoner incarcerated by a state. *United States v. Mauro*, 436 U.S. 340, 98 S.Ct. 1834, 56 L.Ed.2d 329 (1978). No request has been made by the United States to transfer Lopez

for prosecution within a federal court. Also, Lopez's petition fails to state a claim upon which relief can be granted because this court possesses the necessary original jurisdiction to hear only five types of writs: 1) quo warranto; 2) mandamus; 3) habeas corpus; 4) prohibition; and 5) procedendo. *See* Ohio Constitution, Article IV, Section 3(B)(1). A writ of "habeas corpus ad prosequendum" is not equivalent to a writ of habeas corpus as contained within R.C. Chapter 2725. In addition, the motion to dismiss clearly provides that there exists no active detainer or pending untried indictment, information or complaint against Lopez within Cuyahoga County. *Compare In re Petition of Brown*, 49 Ohio St.3d 222, 551 N.E.2d 954 (1990); *State v. Dye*, 3d Dist. Crawford No. 3-92-47, 1993 Ohio App. LEXIS 2520 (May 14, 1993).

{¶4} Even if this court were to treat Lopez's petition as a request for a writ of habeas corpus pursuant to R.C. Chapter 2725, we would still be required to dismiss the petition as a result of numerous procedural defects. Initially, we find that Lopez has failed to properly caption his petition by not including "the names and addresses of all of the parties" in the caption of the petition as required by Civ.R. 10(A). *State ex rel. Sherrills v. State*, 91 Ohio St.3d 133, 742 N.E.2d 651 (2001).

{¶5} Lopez has also failed to comply with the mandatory requirement of R.C. 2969.25(A). Pursuant to R.C. 2969.25(A), an inmate that commences a civil action against a government entity or government employee must file a sworn affidavit that contains a description of each civil action or appeal of a civil action filed in the previous

five years in any federal or state court. *State ex rel. McGrath v. McDonnell*, 126 Ohio St.3d 511, 2010-Ohio-4726, 935 N.E.2d 830.

{¶6} In addition, Lopez has failed to attach a copy of the commitment or cause of his detention, a violation of R.C. 2725.04(D). The failure to attach any commitment papers is fatal to a petition for habeas corpus. *State ex rel. McCuller v. Callahan*, 98 Ohio St.3d 307, 2003-Ohio-858, 784 N.E.2d 108; *State ex rel. Johnson v. Ohio Dept. of Rehab. & Corr.*, 95 Ohio St.3d 70, 765 N.E.2d 356 (2002). Finally, Lopez did not comply with the mandatory verification requirement of R.C. 2725.04. *Malone v. Lane*, 96 Ohio St.3d 415, 2002-Ohio-4908, 775 N.E.2d 527; *Chari v. Vore*, 91 Ohio St.3d 323, 744 N.E.2d 763 (2001).

{¶7} Accordingly, we grant the motion to dismiss. Costs to Lopez. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶8} Petition dismissed.

LARRY A. JONES, SR., PRESIDING JUDGE _____

TIM McCORMACK, J., and
PATRICIA ANN BLACKMON, J., CONCUR