

[Cite as *Whitman v. Shaffer*, 2010-Ohio-446.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94486

WILLIAM WHITMAN

PETITIONER

vs.

WARDEN SHAFFER

RESPONDENT

**JUDGMENT:
PETITION DENIED**

Writ of Habeas Corpus
Motion No. 430537
Order No. 430712

RELEASE DATE: February 8, 2010

FOR PETITIONER

William Whitman, pro se
Inmate # 0189907
P. O. Box 5600
Cleveland, Ohio 44101

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

By: Thorin Freeman
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MARY J. BOYLE, J.:

{¶ 1} On January 8, 2010, petitioner William Whitman filed a petition for a writ of habeas corpus. Whitman, the defendant in *State v. Whitman*, Cuyahoga County Court of Common Pleas Case No. CR-526494, asks this court to issue the writ because his speedy trial rights were allegedly violated. On January 25, 2010 and January 26, 2010, the relator and respondent filed cross motions for summary judgment. For the following reasons, we grant respondent's motion for summary judgment and deny relator's motion for summary judgment.

{¶ 2} Initially we note that the petition has several defects which prevent petitioner from maintaining an action in habeas corpus. R.C. 2725.04 requires that petitions for habeas corpus be verified. We further note that the Supreme

Court of Ohio is adamant that unverified petitions for habeas corpus be dismissed. *Chari v. Vore*, 91 Ohio St.3d 323, 2001-Ohio-49, 744 N.E.2d 763; *State ex rel. Crigger v. Ohio Adult Parole Auth.*, 82 Ohio St.3d 270, 1998-Ohio-239, 695 N.E.2d 254; *State ex rel. Williams v. Corrigan*, Cuyahoga App. No. 87150, 2005-Ohio-6092; *State ex rel. Woods v. State* (May 21, 2001), Cuyahoga App. No. 79577. Whitman's failure to attach an affidavit that is sworn before a notary requires dismissal. *Morris v. Bureau of Sentence Computation*, Cuyahoga App. No. 89517, 2007-Ohio-1444; *State ex rel. McKay v. Corrigan*, Cuyahoga App. No. 88340, 2006-Ohio-4775.

{¶ 3} Whitman also failed to comply with the mandatory requirements of R.C. 2725.04(D), which requires that a copy of the commitment papers be attached to the petition for a writ of habeas corpus. The failure to attach the commitment papers causes the petition to be fatally defective. *Brown v. Rogers*, 72 Ohio St.3d 339, 1995-Ohio-72, 650 N.E.2d 422; *Cornell v. Schotten*, 69 Ohio St.3d 466, 1994-Ohio-74, 633 N.E.2d 1111; *Bloss v. Rogers* (1992), 65 Ohio St.3d 145, 602 N.E.2d 602. Whitman also incorrectly captioned the petition. See R.C. 2725.04(B). See, also, *State ex rel. Sherrills v. State*, 91 Ohio St.3d 133, 2001-Ohio-299, 742 N.E.2d 651, which affirmed the sua sponte dismissal of a petition for habeas corpus because the petitioner did not name the proper respondent. In this matter, Whitman named Warden Shaffer but the correct party respondent is Sheriff Bob Reid.

{¶ 4}We further note that Whitman failed to comply with R.C. 2969.25, which requires the attachment of an affidavit describing each civil action or appeal filed by the relator within the previous five years in any state or federal court. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594; *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242; *In Re: Woods* (Apr. 26, 2001), Cuyahoga App. No. 79467; *Clark v. State* (May 17, 2001), Cuyahoga App. No. 79584.

{¶ 5}Finally, a claim of a denial of speedy trial right is not cognizable in an extraordinary writ action and must be raised on appeal. *State ex rel. Williams v. Brigano*, 78 Ohio St.3d 413, 1997-Ohio-210, 678 N.E.2d 568; *Russell v. Tate* (1992), 64 Ohio St.3d 444, 596 N.E.2d 1039; *State ex rel. Bell v. Blair* (1975), 43 Ohio St.2d 95, 330 N.E.2d 902; *Novak v. State of Ohio*, (July 12, 2000), Cuyahoga App. No. 78263.

{¶ 6}Accordingly, we grant the respondent's motion for summary judgment. Relator to bear costs. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Petition denied.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR