Supreme Court of Ohio Clerk of Court - Filed July 29, 2022 - Case No. 2022-0816

IN THE SUPREME COURT OF OHIO

STATE EX REL., TYLER STAFFORD Petitioner	)	CASE NO. 2022-0816
v.	)	PETITION FOR PREEMPTORY WRIT OF HABEAS CORPUS AND WRIT OF MANDAMUS
KANDY FATHEREE AND JUDGE RON CABLE Respondents.	)	AN ORIGINAL ACTION

MOTION FOR JUDGMENT ON THE PLEADINGS OF RESPONDENT CABLE

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Now comes Judge Ron Cable, by and through counsel, and moves the Court, pursuant to Civ.R. 12(C) and S.Ct.R.Prac 12.04(B)(2) for a judgement in his favor based on the pleadings. The Petition is fatally defective and fails to state a claim for relief for the reasons stated in the following Memorandum in Support. Accordingly, Respondent Judge Cable is entitled to judgment in his favor.

MEMORANDUM IN SUPPORT

I. STATEMENT OF PROCEDURE

Petitioner, State ex rel. Tyler Stafford has filed a petition for a preemptory writ of habeas corpus and writ of mandamus (the "Petition"). The Petition was filed at the office of the Clerk of Court of the Supreme Court of Ohio on July 1, 2022. Respondent Judge Cable was served on July 8, 2022. Respondent Judge Cable filed an Answer to the Petition and this Motion for Judgment on the Pleadings at the same time, pursuant to S.Ct.Prac. R. 12.04(B)(2).

II. STATEMENT OF FACTS

From the Petition and the material attached thereto, Petitioner alleges that he was arrested on June 11, 2022, in death of a 17-year-old male and since then held in the

Summit County Jail on a bond of $1,000,000, pending indictment. Petitioner alleges that no records of the Akron Municipal Court were "publicly available" with the exception of a printout he was able to locate on the website of the Clerk of the Akron Municipal Court, which he attached to the Petition, among other items.

To his Answer, Respondent Cable attached as exhibits the relevant contents of the file of the Akron Municipal Court in case 22-CRA-04172, *Ohio v. Tyler Stafford,* and relevant contents of the Summit County Common Pleas Court in case CR-2022-07-2498-B. The exhibits include the following:

Exhibit 1: A copy of the file jacket reflecting the case number, Petitioner's name, his attorney, charges, dates/events, including under the heading "bond hearing", "date—6/13/2022, amount—1 million, type—10%, Judge—JK [James Kimbler]".

Exhibit 2: A copy of a journal entry reflecting that Petitioner entered a plea of not guilty on June 13, 2022, signed by Judge James Kimbler.

Exhibit 3: A copy of an order for Petitioner to be committed to the Summit County Jail on June 11, 2022, and held in custody.

Exhibit 4: A copy of Akron Municipal Court, Defendant RAP Sheet Information for Petitioner.

Exhibit 5: Field Arrest Summons Form, charging Petitioner with murder and felonious assault.

Exhibit6: Complaint in Akron Municipal Court case 22-CRA-4172, charging Petitioner with violation of R.C. 2903.02 (murder), and determination of probable cause for murder, dated June 11, 2022.

Exhibit 7: Complaint in the Akron Municipal Court case 22-CRA-4172, charging Petitioner with violation of R.C. 2903.11 (felonious assault), and determination of probable cause, dated June 11, 2022.

Exhibit 8: Affidavit for Petitioner's arrest for charges of murder and felonious assault, sworn June 11, 2022.

Exhibit 9: A copy of the Docket of the Summit County Clerk of Courts, Case No. CR-2022-07-2498-B, State of Ohio v. Tyler Stafford.

Exhibit 10: A copy of the Summons, Court of Common Pleas, Case No. CR-2022-07-2498-B, State of Ohio v. Tyler Stafford.

Exhibit 11: A copy of the Indictment, Case Nos. 2022-07-2498(A), (B) and (C).

III. LAW AND ARGUMENT

A petition for an extraordinary writ may be dismissed pursuant to Civ. R. 12(C) and S.Ct.Prac.R. 12.04(C) where it appears beyond doubt that relator cannot prove any set of facts that would support relief being granted. See, e.g. *State ex rel. Peoples v. O'Shaughnessy*, 165 Ohio St. 3d 54, 2021-Ohio-1572, 175 N.E.3d 524, ¶10; *State ex rel. Evans v. Tieman*, 157 Ohio St. 3d 99, 2019-Ohio-2411, 131 N.E.3d 930, ¶11. Motions under Civ.R. 12(C) are specifically for resolving questions of law and determination of a motion for judgment on the pleadings is restricted solely to allegations in the pleadings. *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161, 166, 297 N.E.2d 113.

A. Due to the Felony Indictment, the Municipal Court and Respondent Judge Cable Lack Subject-Matter Jurisdiction over Petitioner.

Respondent Cable is entitled to judgment in his favor because no order this court may issue to him will provide a remedy to Petitioner. The Petitioner was directly indicted

on July 27, 2022, by the grand jury of Summit County, Ohio, charging the felony of involuntary manslaughter and the misdemeanor of assault. The indictment was filed with the Clerk of Courts of Summit County on July 27, 2022, in case number CR-2022-07-2498-B. Accordingly, Judge Cable, a judge in the Akron Municipal Court, lacks jurisdiction over Petitioner, including the inability to alter the bond or authorize Petitioner's release from incarceration.

Petitioner is not entitled to a writ of habeas corpus as a matter of law. "[H]abeas corpus is proper in the criminal context only if petitioner is entitled to immediate release from prison or some other physical confinement." *Brooks v. Kelly*, 144 Ohio St.3d 322, 2015-Ohio-2805, 43 N.E.3d 385, ¶ 9. According to the Petition, Relator was being held at the Summit County jail on a bond of $1,000,000. Upon direct indictment by the grand jury of Summit County, the indictment was filed in the Court of Common Pleas of Summit County in case number CR-2022-07-2498-B. (See Respondent's Exhibit 11, attached to the Answer). At the present time, due to the matter being before the Court of Common Pleas, Judge Cable of the Akron Municipal Court has no jurisdiction over the terms of Relator's continued incarceration or resolution of the pending charges. See R.C. 1901.20(B); *State v. Sims*, (9th Dist.) 2006-Ohio-2415 ("[A] municipal court does not have jurisdiction over felony offenses. . .") ¶24; See also, *State v. Hemmingway*, (8th Dist.), 2012-Ohio-476, ¶ 17. Any writ against Respondent Judge Cable would not afford Petitioner the relief he seeks. Accordingly, the motion for judgement on the pleadings should be granted in favor or Judge Ron Cable, and the Petition dismissed with prejudice.

B. The Municipal Court had Jurisdiction to Order the Bond.

ORC 2725.05 states, in part: "If it appears that a person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or magistrate, or

by virtue of the judgment or order of a court of record, and that the court or magistrate had jurisdiction to issue the process, render the judgment, or make the order, the writ of habeas corpus shall not be allowed." Petitioner does not allege the Municipal Court lacked jurisdiction, but rather asserts that the bond is unreasonable and/or that he lacks access to a record of the hearing. The Petition recognizes that bond had been set at one-million dollars and concedes that the Akron Municipal Court had jurisdiction to do so, for Petitioner invokes the jurisdiction of the Court to amend the bond. (See Petition, ¶11 and ¶24). Accordingly, because the Municipal Court had jurisdiction to issue the bond upon which Petitioner was held, the Petition for habeas should be denied and judgement issued in favor of Respondent Judge Cable pursuant to R.C. 2725.05.

C. Failure to attach All Commitment Papers to the Petition is Fatal to Respondent's Claims for Relief.

Petitioner failed to attach all commitment papers to his Petition for habeas corpus, instead alleging that they were not available. The exhibits to Respondent's Answer show otherwise. Devoid from the Petition is any explanation of any effort taken by counsel for Petitioner to locate the file of the Akron Municipal Court and the records contained therein beyond merely a "review of the docket." (Petition, ¶11). Respondent does not dispute that the Clerk of the Akron Municipal Court had not made the file and its contents available electronically, but that does not mean the file and its contents did not exist or were unavailable. The exhibits attached to Respondent's Answer establish that the matter proceeded in a lawful manner, including that the records existed and were available.

"Failure to attach commitment papers is fatally defective to a petition for a writ of habeas corpus because when a petition that does not comply with R.C. 2725.04(D) is presented to a court, 'there is no showing of how the commitment was procured and there

is nothing before the court on which to make a determined judgment except, of course, the bare allegations of [the] petitioner's application.' " *Daily v. Wainwright*, 156 Ohio St. 3d 510, 129 N.E. 3d 444, 2019-Ohio-2064, ¶5, citing *Bloss v. Rogers*, 65 Ohio St.3d 145, 146, 602 N.E.2d 602 (1992); See also, *Pence v. Bunting*, 143 Ohio St. 3d 532, 2015-Ohio-2016, 40 N.E. 3d 1058, ¶6, ("all commitment papers are necessary for a complete understanding of the petition").

While Petitioner attempts to circumvent the requirement of R.C. 2725.04(D), relying on the bare allegation that a "review of the docket" supports the conclusion that journal entries were unavailable, the fact remains that Petitioner provided no commitment papers whatsoever to this Court. Thus, there is nothing before the Court that would allow it to make a determined judgment. Respondent Judge Cable is entitled to judgment in his favor denying the writ of habeas corpus on that basis.

D. No Writ should Issue, For Petitioner had a Remedy at Law.

Petitioner appears to plead that he has been held unlawfully without bond and without a bond hearing. See, Petition, ¶¶11, 15, 18, 24. To address this alleged violation, Petitioner seeks a writ ordering Respondent Judge Cable to immediately assign a judge to conduct a bond hearing and file a journal entry reflecting the judge's findings. Petition, ¶24. Had Petitioner followed R.C. 2937.34, he could have obtained the very same remedy, timely, from a different judge.

Habeas corpus is not available when there is or was an adequate remedy in the ordinary course of law. R.C. 2725.01; *McKinney v. Haviland*, 162 Ohio St. 3d 150, 2020-Ohio-4785, 164 N.E.3d 415 (2020). "The few situations in which habeas corpus may lie to correct a nonjurisdictional error are those in which there is no adequate remedy at law." *Knauss v. Sloan*, 146 Ohio St. 3d 248, 2016-Ohio-3310, 54 N.E.3d 1242, ¶6, quoting

Appenzeller v. Miller, 136 Ohio St. 3d 378, 2013-Ohio-3719, 996 N.E. 2d 919, ¶9. Revised Code 2937.34, however, provides a legal remedy; according to that statute, any person charged with an offense for which he has not been indicted, upon claiming to be unlawfully detained, may demand the sheriff notify the court of common pleas and the prosecuting attorney; thereupon, the common pleas judge will hear the matter and make such orders as justice requires, including admitting bail, releasing the person, or recommitting the person to jail.

Because Petitioner had an adequate remedy at law, under R.C. 2937.34, he is not entitled to relief by a writ of habeas corpus.

E. Upon Indictment, the Case became Moot.

Petitioner was indicted by the grand jury of Summit County, Ohio, on July 27, 2022. Thereupon, the jurisdiction of Respondent Judge Cable of the Akron Municipal Court was terminated. See R.C. 1901.20(B); *State v. Sims*, (9th Dist.) 2006-Ohio-2415 ("[A] municipal court does not have jurisdiction over felony offenses. . .") ¶24.

"[M]andamus will not issue to compel a vain act." *State ex rel. Peoples v.* O'Shoughnessy, 165 Ohio St. 3d 54, 2021-Ohio-1572, 175 N.E. 3d 524, ¶11. An act is in vain when the underlying dispute has become moot, such that relief in the pending lawsuit would not affect the outcome. Id. No action by Judge Cable will result in Petitioner obtaining a bond hearing or being released from custody. Requiring Judge Cable to file a journal entry at this stage of proceedings would have no meaning, and thus be in vain. Accordingly, there is no writ that could afford the relief Petitioner requested. Because the matter is moot, the Petition in mandamus should be denied and judgment granted in favor of Respondent Judge Cable.

Conclusion

For the foregoing reasons, Respondent Judge Cable is entitled to judgment on the pleadings. The Petition itself is fatally defective in several respects as explained above. Additionally, the pleadings, including the writings attached thereto, establish that Respondent is entitled to judgment as a matter of law. Accordingly, the requested writs in habeas corpus and mandamus should be denied and judgment entered in favor of Respondent Judge Cable with prejudice at Petitioner's cost.

Respectfully submitted,

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PROOF OF SERVICE

This is to certify that on this 29th day of July, 2022, a true copy of the foregoing Motion for Judgment on the Pleadings was filed electronically. This filing was also emailed to the following:

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And

Attorney Jacquenette Corgan
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/s/ John R. York
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