

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JAMES BLACK	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
	:	Hon. W. Scott Gwin, J.
	:	Hon. Julie A. Edwards, J.
-vs-	:	
	:	
ASHLAND COUNTY	:	Case No. 2011-CA-054
PROSECUTOR'S OFFICE	:	
	:	
	:	
Respondent	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Writ of Prohibition

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: March 26, 2012

APPEARANCES:

For Petitioner

For Respondent

JAMES BLACK PRO SE

RAMONA FRANCESCONI ROGERS
Ashland County Prosecutor
BY MICHAEL D. DONATINI
Assistant Prosecuting Attorney
110 Cottage St., Third Floor
Ashland, OH 44805

Gwin, J.

{1} Petitioner, James Black, has filed a Petition for Writ of Prohibition which he has moved to amend to include a Writ of Habeas Corpus. Respondent has filed a Motion to Dismiss urging this Court to find Petitioner has named an improper Respondent and Petitioner has an adequate remedy at law.

{2} In order for a writ of prohibition to issue, petitioner must prove that: (1) the lower court is about to exercise judicial authority; (2) the exercise of authority is not authorized by law; and, (3) the petitioner has no other adequate remedy in the ordinary course of law if a writ of prohibition is denied. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 178, 631 N.E.2d 119. A writ of prohibition, regarding the unauthorized exercise of judicial power, will only be granted where the judicial officer's lack of subject-matter jurisdiction is patent and unambiguous. *Ohio Dept. of Adm. Serv., Office of Collective Bargaining v. State Emp. Relations Bd.* (1990), 54 Ohio St.3d 48, 562 N.E.2d 125. *State ex rel. Daniels v. Harris*, 2008 WL 5197131, 1 (Ohio App. 5 Dist.).

{3} The named Respondent in this case is the Ashland County Prosecutor. A writ of prohibition is used to limit judicial authority. The Ashland County Prosecutor does not have judicial authority, therefore, prohibition cannot lie to prevent the Ashland County Prosecutor from acting.

{4} With regard to Petitioner's habeas corpus claim, Petitioner has also failed to name a proper respondent. See *Tate v. Bernard* (Nov. 21, 2001), Trumbull App. No. 2001-T-0087, 2001 WL 1497206 ("the writ will lie only against the individual who is directly responsible for keeping the petitioner in custody"); *Jackson v. State* (Apr. 19,

2002), Cuyahoga App. No. 81007, 2002 WL 737495 (dismissal of petition for writ of habeas corpus appropriate when petitioner named the state rather than the sheriff—his custodian as the respondent). Petitioner has named the Ashland County Prosecutor rather than the warden or sheriff who is responsible for keeping Petitioner in custody.

{5} Because neither prohibition nor habeas corpus lie against the named Respondent, the petition is dismissed for failure to state a claim upon which relief may be granted.

By Gwin, J.,

Delaney, P.J., and

Edwards, J., concur

HON. W. SCOTT GWIN

HON. PATRICIA A. DELANEY

HON. JULIE A. EDWARDS

