

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Salih Abdul Malik Al-Bey

Court of Appeals No. L-22-1120

Petitioner

v.

Lori Olender, Judge
Lucas County Common Pleas Court

Edward Shelton, Warden, Allen
Oakwood Correctional Institution

Evy M. Jarrett, Asst. Prosecuting Attorney
Lucas County Common Pleas Court

DECISION AND JUDGMENT

Respondents

Decided: June 23, 2022

* * * * *

Sali Abdul Malik Al-Bey, Pro se.

Julia R. Bates, Lucas County Prosecuting Attorney, and
Kevin A. Pituch, Assistant Prosecuting Attorney, for respondents.

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DUHART, J.

{¶ 1} This matter is before the court on writ of habeas corpus filed by pro se petitioner, Salih Abdul Malik Al-Bey, on May 19, 2022. The state has not filed a response. For the reasons that follow, we dismiss the writ of habeas corpus.

Law

{¶ 2} The requirements for a writ of habeas corpus in Ohio are set forth in R.C. 2725.01, *et seq.* In order to be entitled to a writ of habeas corpus, the party must show he is being unlawfully restrained of his liberty, R.C. 2725.01, and he is entitled to immediate release from prison. *Leyman v. Bradshaw*, 146 Ohio St.3d 522, 2016-Ohio-1093, 59 N.E.3d 1236, ¶ 8. In addition, R.C. 2725.04(D) sets forth that the party who files a petition for writ of habeas corpus shall include “[a] copy of the commitment or cause of detention of such person.” Failure to comply with R.C. 2725.04(D) is fatal to a habeas corpus request. *Cook v. State*, 150 Ohio St.3d 96, 2016-Ohio-3415, 79 N.E.3d 516, ¶ 7.

{¶ 3} Further, “[a] habeas corpus action is a civil action and therefore the provisions of R.C. 2969.21 through 2969.27 are applicable to such action.” *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, 797 N.E.2d 982, syllabus. Specifically, R.C. 2969.25(A) provides in pertinent part:

At the time that an inmate commences a civil action * * * against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court. * * *

{¶ 4} A case must be dismissed if the party fails to comply with the mandatory requirements of R.C. 2969.25 in the commencement of the action. *State ex rel. Graham v. Findlay Mun. Court*, 106 Ohio St.3d 63, 2005-Ohio-3671, 831 N.E.2d 435, ¶ 6.

Analysis

{¶ 5} Upon review, petitioner failed to attach commitment papers and a proper affidavit to his writ of habeas corpus, as required. Thus, petitioner did not comply with R.C. 2725.04(D) and R.C. 2969.25(A). Accordingly, the writ of habeas corpus is dismissed. Costs to petitioner. It is further ordered that the Clerk of the Sixth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 5(B).

Writ dismissed.

Mark L. Pietrykowski, J.

JUDGE

Gene A. Zmuda, J.

JUDGE

Myron C. Duhart, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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