

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

WILLIAM BAILEY,

Relator,

v.

OHIO, ET AL.,

Respondent.

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No. 112756

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: WRIT DISMISSED**

**DATED: July 11, 2023**

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Writ of Habeas Corpus  
Motion No. 564629  
Order No. 565429

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***Appearances:***

William Bailey, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Anthony T. Miranda, Assistant Prosecuting Attorney, *for respondent*.

MICHAEL JOHN RYAN, J.:

{¶ 1} On May 22, 2023, the petitioner, William Bailey, commenced this habeas corpus action, naming the respondent as “Ohio, et al.” He argues that he is being illegally detained in the Cuyahoga County Jail without having a preliminary

hearing pursuant to Crim.R. 5 and on an absence of evidence in violation of his constitutional rights. On May 25, 2023, the Cuyahoga County Prosecutor on behalf of the respondent, moved to dismiss the petition for a writ of habeas corpus. Bailey did not file a timely response. For the following reasons, this court grants the motion to dismiss and dismisses the petition.

{¶ 2} In one underlying case, *State v. Bailey*, Cuyahoga C.P. No. CR-22-676208-A, the grand jury indicted Bailey on four counts of burglary, four counts of theft, three counts of criminal damaging, one count of possessing criminal tools, and one count of unauthorized use of a vehicle. In the other underlying case, *State v. Bailey*, Cuyahoga C.P. No. CR-23-679093-A, the grand jury indicted him for three counts of burglary and three counts of theft for incidents on three different days. The trial court set bail at \$20,000 in each case.

{¶ 3} Bailey's petition is fatally defective. R.C. 2725.04(D) requires a copy of the commitment papers or cause of detention. The Supreme Court of Ohio in *State ex rel. Davis v. Sheldon*, 168 Ohio St.3d 279, 2022-Ohio-2789, 198 N.E.3d 93, has held that all commitment papers are necessary for a complete understanding of the petition, including indictments. However, Bailey has attached no commitment papers.

{¶ 4} R.C. 2725.04 further requires the petition to be verified. In *Chari v. Vore*, 91 Ohio St.3d 323, 327, 744 NE.2d 2d 763 (2001), the Supreme Court of Ohio ruled, "Verification' means a 'formal declaration made in the presence of an authorized officer, such as a notary public, by which one swears to the truth of the

statement in the document.’ Garner, *Black’s Law Dictionary* (7 Ed.1999) 1556 \* \* \*.” *Id.* at 327. The Supreme Court of Ohio then reversed the decision of the court of appeals granting the writ and awarding relief and held that the case should have been summarily dismissed because the petition was procedurally defective. Bailey did not verify his petition. Thus, it is fatally defective.

{¶ 5} He also did not comply with R.C. 2969.25(C), which requires an inmate to file a certified statement from his prison cashier setting forth the balance in his private account for each of the preceding six months. Bailey did not file even a poverty affidavit, much less a cashier’s statement. This is also sufficient reason to deny the petition, deny indigency status, and assess costs against the petitioner. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842; and *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378 — the defect may not be cured by subsequent filings.

{¶ 6} Bailey also failed to name the proper respondent. R.C. 2725.04(B) requires that the petitioner specify the officer or name of the person by whom the prisoner is so confined or restrained. In *Hamilton v. Collins*, 11th Dist. Lake No. 2003-L-094, 2013-Ohio-4104, ¶ 3, the court of appeals held that in considering the legal sufficiency of a habeas corpus claim, “such claims can be maintained only against the jailer or warden who presently has legal custody of the individual.” Naming “Ohio, et al.” as the respondent does not fulfill this requirement. *Ball v. State*, 8th Dist. Cuyahoga No. 84408, 2004-Ohio-1906. Similarly, Bailey did not

include the names and addresses of all of parties as required by Civ.R. 10(A). *Ball v. Statem* 8th Dist. Cuyahoga No. 84408, 2004-Ohio-1906.

{¶ 7} The gravamen of Bailey's complaint is that because he did not have a preliminary hearing, he should be immediately discharged. However, an indictment by the grand jury renders any defects in the preliminary hearing moot. Thus, habeas corpus will not lie to effect immediate discharge for failure to hold a preliminary hearing when the grand jury has indicted the individual. *Clarke v. McFaul*, 8th Dist. Cuyahoga No. 89436, 2007-Ohio-1592. Furthermore, habeas corpus is not available to challenge the sufficiency of the evidence. *State ex rel. Tarr v. Williams*, 112 Ohio St.3d 51, 2006-Ohio-6368, 857 N.E.2d 1225, ¶ 4.

{¶ 8} Accordingly, this court grants the motion to dismiss and dismisses the petition for a writ of habeas corpus. Petitioner to pay costs. This court directs the clerk of courts to serve all parties notice of the judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶ 9} Petition dismissed.

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MICHAEL JOHN RYAN, JUDGE

MARY J. BOYLE, P.J., and  
SEAN C. GALLAGHER, J., CONCUR