

[Cite as *Pierre v. McFaul*, 2010-Ohio-271.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94357

LAMAR PIERRE

RELATOR

vs.

GERALD T. MCFAUL, SHERIFF

RESPONDENT

**JUDGMENT:
PETITION DENIED**

Writ of Habeas Corpus
Motion No. 429521
Order No. 430206

RELEASE DATE: January 22, 2010

FOR RELATOR

Lamar Pierre, pro se
Cuyahoga County Jail
P. O. Box 5600
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ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

By: Daniel T. Van
Assistant County Prosecutor
8th Floor Justice Center
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KENNETH A. ROCCO, J.:

{¶ 1} Petitioner, Lamar Pierre, has filed a petition for a writ of habeas corpus. Pierre argues that he is being improperly held in prison by the respondent, the Cuyahoga County Sheriff, since the sentences of incarceration, as imposed in *State v. Pierre*, Cuyahoga County Court of Common Pleas Case Nos. CR-474820, CR-478839, and CR-479219, are void based upon the improper imposition of postrelease control.¹ Respondent has filed a motion for summary judgment. For the reasons stated below, we

¹Pursuant to Civ.R. 21 and Civ. R. 25(D)(1), the present Sheriff of Cuyahoga County, Bob Reid, is substituted for the former Sheriff of Cuyahoga County, Gerald T. McFaul.

grant the motion for summary judgment and decline to issue a writ of habeas corpus on behalf of Pierre.

{¶ 2} Initially, we find that Pierre's petition for a writ of habeas corpus is procedurally defective. R.C. 2725.04 mandates that a petition for a writ of habeas corpus must be verified. Herein, Pierre has failed to support his petition with the necessary verification. The failure to verify the petition for a writ of habeas corpus requires its dismissal. *Chari v. Vore*, 91 Ohio St.3d 323, 2001-Ohio-49, 744 N.E.2d 763. See, also, *State ex rel. Crigger v. Ohio Adult Parole Auth.*, 82 Ohio St.3d 270, 1998-Ohio-239, 695 N.E.2d 254.

{¶ 3} It must also be noted that Pierre's petition is defective because he failed to include copies of all pertinent commitment papers as required by R.C. 2725.04(D). Pierre's failure to attach copies of his commitment papers requires that we dismiss his petition for a writ of habeas corpus. *State ex rel. Winnick v. Gansheimer*, 112 Ohio St.3d 149, 2006-Ohio-6521, 858 N.E.2d 409; *Harris v. Anderson*, 109 Ohio St.3d 101, 2006-Ohio-1934, 846 N.E.2d 43; *Bloss v. Rogers* (1992), 65 Ohio St.3d 145, 602 N.E.2d 602.

{¶ 4} Finally, Pierre has failed to establish that he is entitled to a writ of habeas corpus. The principles governing a writ of habeas corpus are well-established. Habeas corpus is warranted only in extraordinary circumstances, when there is an unlawful restraint of a person's liberty, and

there exists no other adequate remedy in the ordinary course of the law. *Patterson v. Ohio Adult Parole Auth.*, 120 Ohio St.3d 311, 2008-Ohio-6147, 898 N.E.2d 950; *Watkins v. Collins*, 111 Ohio St.3d 425, 2006-Ohio-5082, 857 N.E.2d 78; *In re Coleman*, 95 Ohio St.3d 284, 2002-Ohio-1804, 767 N.E.2d 677; and *Thomas v. Huffman*, 84 Ohio St.3d 266, 1998-Ohio-540, 703 N.E.2d 315.

{¶ 5} In the case sub judice, Pierre's petition for a writ of habeas corpus is based upon the claim that the sentences imposed in CR-479219, CR-474820, and CR-478839 are void, since the trial court improperly imposed a term of five years postrelease control in each criminal case. This court, however, has established that the improper imposition of postrelease control may not be addressed in a petition for habeas corpus, but must be raised on appeal.

{¶ 6} "*Patterson* is particularly instructive for [petitioner's] second argument. In that case, [petitioner] commenced a habeas corpus to contest his post-release control sanctions. He claimed that the trial judge failed to notify him of postrelease control during the sentencing hearing, although the judge included it in the sentencing entry. The Supreme Court of Ohio upheld the dismissal of the habeas corpus action on the grounds of adequate remedy at law. '[Petitioner] had an adequate remedy by way of direct appeal from his

sentence to raise his claim that he did not receive proper notification about postrelease control at his sentencing hearing. See, e.g., *Watkins v. Collins*, 111 Ohio St.3d 425, 2006-Ohio-5082, 857 N.E.2d 78, ¶45 (“The remedy for improper notification about postrelease control at the sentencing hearing is resentencing-not release from prison’ and ¶53 (‘habeas corpus is not available to contest any error in the sentencing entries, and petitioners have or had an adequate remedy by way of appeal to challenge the imposition of postrelease control’).’ *Patterson* at ¶8.” *In re: Jackson vs. Phillips, et al*, Cuyahoga App. No. 91963, 2009-Ohio-125, at ¶10.

{¶ 7} It must also be noted that habeas corpus may not be employed to challenge any sentencing errors, since the petitioner possesses an adequate remedy at law by way of appeal to challenge the improper imposition of postrelease control. *Patterson* at ¶8.

{¶ 8} Herein, Pierre possesses or possessed an adequate remedy at law, through an appeal from the sentences of incarceration as entered in CR-4792219, CR-474820, and CR-478839. Thus, Pierre is not entitled to a writ of habeas corpus.

{¶ 9} Accordingly, we grant the respondent’s motion for summary judgment. Costs to Pierre. 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.

KENNETH A. ROCCO, JUDGE

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