

[Cite as *Jones v. Reid*, 2010-Ohio-2234.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94694

MARK E. JONES

RELATOR

vs.

BOB REID, SHERIFF

RESPONDENT

**JUDGMENT:
PETITION DENIED**

Writ of Habeas Corpus
Motion No. 431680
Order No. 433722

RELEASE DATE: May 17, 2010

FOR RELATOR

Mark E. Jones, pro se
Inmate # 93496
Cuyahoga County Jail
P.O. Box 5600
Cleveland, Ohio 44113

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

By: Diane Smilanick
Assistant County Prosecutor
8th Floor Justice Center
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PATRICIA A. BLACKMON, J.:

{¶ 1} On February 18, 2010, the petitioner, Mark Jones, commenced this habeas corpus action against the respondent, Sheriff Bob Reid. Jones seeks his immediate release from Reid's custody on a variety of theories: (1) he was never indicted, but is being prosecuted on an information charge pursuant to Criminal Rule 3; (2) the common pleas court did not have jurisdiction to conduct his Criminal Rule 5 initial appearance; the Cleveland Municipal Court was the proper forum; and (3) he was deceived into signing a waiver of indictment. On February 23, 2010, Sheriff Reid filed a response to Jones's petition, and Jones moved for judgment on the pleadings on March 3,

2010. For the following reasons, this court denies Jones's petition for a writ of habeas corpus.

{¶ 2} First, the petition is fatally defective. R.C. 2725.04(D) requires a habeas corpus petitioner to include a copy of the commitment or cause of detention. Jones attached copies of his information charges and the docket. These are insufficient. Compliance with R.C. 2725.04(D) requires attachment of the journal entry causing petitioner's detention, and a copy of the docket is not sufficient. *Wilson v. Kochevar*, Cuyahoga App. No. 84516, 2004-Ohio-2984.

{¶ 3} R.C. 2725.04 further requires the petition to be verified. In *Chari v. Vore*, 91 Ohio St.3d 323, 2001-Ohio-49, 744 N.E.2d 763, 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 ***." Jones attached an "affidavit" with his petition at the end of which he stated "I assert that the foregoing is true and accurate, to the best of my knowledge and belief, under full caution as to the penalty of perjury." However, it is not notarized. Therefore, it is insufficient to be a proper verification or affidavit under Ohio law. *Griffin v. McFaul*, 116 Ohio St.3d 30, 2007-Ohio-5506, 876 N.E.2d 527. Loc.App.R. 45(B)(1)(a) requires all complaints for original actions, including habeas

corpus, to be supported by an affidavit specifying the details of the claim. Because the “affidavit” is not properly notarized, it does not fulfill the rule’s requirement and provides an additional reason for dismissal. *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077 and *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899.

{¶ 4} Jones has also failed to comply with R.C. 2969.25, which requires an affidavit that describes each civil action or appeal filed by the petitioner within the previous five years in any state or federal court and with R.C. 2969.25(C) which requires that an inmate file a certified statement from the prison cashier setting forth the balance in the petitioner’s private account for each of the preceding six months. Jones submitted “affidavits” to comply with those provisions of Ohio law, but they were not notarized. His failure to comply with R.C. 2969.25 warrants dismissal of the petition. *State ex rel. Zanders v. Ohio Parole Board*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594 and *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242. His noncompliance with R.C. 2969.25(C) is sufficient reason to deny the petition, deny indigency status, and assess costs against him. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842; *Griffin v. McFaul*, *supra*; and *State ex rel. Hunter v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 176, 2000-Ohio-285, 724 N.E.2d 420. Accordingly, the many pleading deficiencies warrant dismissal.

{¶ 5} Moreover, Jones's claims for relief are meritless. He claims that he did not knowingly waive his right to an indictment and thus, the information charges are insufficient. However, habeas corpus is not the remedy for challenging the sufficiency of an indictment or information. *State ex rel. Hadlock v. McMackin* (1991), 61 Ohio St.3d 433, 575 N.E.2d 184; *State ex rel. Simpson v. Lazaroff*, 75 Ohio St.3d 571, 1996-Ohio-201, 664 N.E.2d 937; *State ex rel. Morris v. Leonard*, 86 Ohio St.3d 624, 1999-Ohio-215; 716 N.E.2d 208; *State ex rel. Beaucamp v. Lazaroff*, 77 Ohio St.3d 237, 1997-Ohio-277, 673 N.E.2d 1273; and *Marshall v. Lazaroff*, 77 Ohio St.3d 443; 1997-Ohio-257, 674 N.E.2d 1378 - allegations of fraud by the prosecutor relating to an indictment are not cognizable in habeas corpus. Furthermore, the sufficiency of the indictment does not relate to the jurisdiction of the trial court. *Kroger v. Engle* (1978), 53 Ohio St.2d 165, 373 N.E.2d 383.

{¶ 6} Moreover, this matter is moot. A review of the docket in the underlying case, *State of Ohio v. Mark Jones*, Cuyahoga County Common Pleas Court Case No. CR-529901, shows that on March 26, 2010, Jones pleaded guilty to theft and forgery. The trial court sentenced him to time served and ordered restitution in the amount of \$3,000. A guilty plea waives the right to challenge errors during the proceedings, including initial appearance and sufficiency of the charge. *Montpelier v. Greeno* (1986), 25 Ohio St.3d 170, 495 N.E.2d 581; and *State v. Kelley* (1991), 57 Ohio St.3d 127,

566 N.E.2d 658. Additionally, it appears that Jones is no longer in physical custody and would not be entitled to relief in habeas corpus. *State ex rel. Smirnoff v. Greene*, 84 Ohio St.3d 165, 1998-Ohio-526, 702 N.E.2d 423.

{¶ 7} Accordingly, this court denies Jones's petition for a writ of habeas corpus and denies his motion for judgment on the pleadings. Jones to pay costs. The court further orders the Clerk of the Eighth District Court of Appeals to serve notice of this judgment upon all parties as required by Civ.R. 58(B).

PATRICIA A. BLACKMON, JUDGE

KENNETH A. ROCCO, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR