

[Cite as *Yancy v. Reid*, 2010-Ohio-4692.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95368

DWIGHT YANCY

RELATOR

vs.

SHERIFF BOB REID

RESPONDENT

**JUDGMENT:
PETITION DISMISSED**

Writ of Mandamus
Motion No. 435685
Order No. 436465

RELEASE DATE: September 24, 2010

FOR RELATOR

Dwight A. Yancy, pro se
Inmate # 0062-758
1215 West Third Street
P.O. Box 5600
Cleveland, Ohio 44113

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

By: Mary McGrath
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

COLLEEN CONWAY COONEY, J.:

{¶ 1} On July 2, 2010, the petitioner, Dwight Yancy, commenced this habeas corpus petition against the respondent, Sheriff Bob Reid. Yancy alleges that in the underlying case, *State v. Dwight Yancy*, Cuyahoga County Common Pleas Court Case No. CR-526395, the trial court improperly revoked his bail and had him incarcerated. Accordingly, Yancy requests that this court set reasonable bail, so that he may be released. On July 13, 2010, the Sheriff, through the Cuyahoga County Prosecutor, moved to dismiss on various grounds.

Yancy never filed a response. For the following reasons, this court grants the Sheriff's motion to dismiss Yancy's petition for a writ of habeas corpus.

{¶ 2} Yancy alleges that in July 2009, the Grand Jury indicted him on insurance fraud, a third degree felony, and securing writing by deception, a fourth degree felony. At that time, the trial court set bond at \$1,000. He further alleges that he made all appearances until March 9, 2010. On that day, the trial court had scheduled a pretrial conference. Yancy avers that he missed this pretrial because his attorney did not inform him of it. Thus, the trial court issued a *capias*, and Yancy was taken into custody on March 15, 2010. Yancy further alleges that on March 15, 2010, there was no bond revocation hearing at that time. A review of the docket indicates that many issues have been before the trial court, including, discovery, suppression of evidence, pro se representation, withdrawal of counsel, speedy trial, and disqualification of the trial judge. On June 29, 2010, Yancy filed a pro se motion for oral hearing on bond revocation. The docket shows that on August 27, 2010, the trial court conducted a hearing for many of these issues, including Yancy's motion on bond revocation. The trial court set bond at \$1,500. The docket further indicates that Yancy posted bond that day and was released from jail. Accordingly, this matter is moot.

{¶ 3} The court further notes that Yancy's complaint is procedurally defective. R.C. 2725.04 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 ***.” The Supreme Court of Ohio then reversed the court of appeals’ granting of the writ and awarding of relief and held that the cause should have been summarily dismissed because the petition was not verified.

{¶ 4} Yancy attached a “verification” with his petition at the end of which he stated per Title 28 U.S.C. §1746 that his statements were made under penalty of perjury. However, it was 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.

{¶ 5} 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. Yancy did not submit an affidavit. This provides an additional basis for dismissal. *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077; *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899.

{¶ 6} The petitioner has also failed to comply with R.C. 2969.25, which requires an affidavit that describes each civil action or appeal filed by the relator within the previous five years in any state or federal court. The relator’s failure to comply with R.C. 2969.25 warrants dismissal of the complaint for a writ of

mandamus. *State ex rel. Zanders v. Ohio Parole Board*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594; *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242.

{¶ 7} Yancy also did not comply 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. This also 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. Yancy's "Declaration of Indigency" was not notarized. Accordingly, the many pleading deficiencies warrant dismissal.

{¶ 8} Accordingly, this court dismisses the petition for a writ of habeas corpus. Costs assessed against petitioner. This court directs the Clerk of the Eighth District Court of Appeals to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

COLLEEN CONWAY COONEY, JUDGE

MARY J. BOYLE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR