

[Cite as *Cruz v. Pinkney*, 2017-Ohio-4308.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105454

LUIS A. CRUZ

RELATOR

vs.

SHERIFF CLIFFORD PINKNEY

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Habeas Corpus
Motion No. 505350
Order No. 506597

RELEASE DATE: June 14, 2017

FOR RELATOR

Luis A. Cruz, pro se
Inmate No. 207959
Cuyahoga County Correctional Center
P.O. Box 5600
Cleveland, Ohio 44101

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: Mary M. Dyczek
Assistant County Prosecutor
The Justice Center, 8th Floor
1200 Ontario Street
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FRANK D. CELEBREZZE, JR., J.:

{¶1} On February 13, 2017, the petitioner, Luis Cruz, commenced this habeas corpus action against the respondent, Sheriff Clifford Pinkney, to have bond reset in the underlying case, *State v. Cruz*, Cuyahoga C.P. No. CR-16-604108-A.¹ On March 13, 2017, the respondent moved for summary judgment on the grounds of pleading deficiencies and adequate remedy at law. Cruz filed a response on March 21, 2017. For the following reasons, this court grants the respondent's motion for summary judgment and denies the application for a writ of habeas corpus.

{¶2} Cruz's 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. Cruz attached a copy of his docket. This is 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*, 8th Dist. Cuyahoga 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:

¹A review of the docket, including the records attached through the electronic docket, shows that the grand jury indicted Cruz for trafficking in heroin, a first-degree felony; possession of heroin, also a first-degree felony; possession of cocaine; permitting drug abuse; having weapons while under disability; possession of criminal tools; and two counts of endangering children. The Cleveland Municipal Court set bond at \$500,000. After the indicted bindover, the Cuyahoga County Common Pleas Court reduced bond to \$100,000, which Cruz posted. In May 2016, Cruz violated a condition of release, testing positive for cocaine. The probation department requested a *capias* for his arrest, and he was taken into custody on May 25, 2016. He has remained incarcerated since then.

“‘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 procedurally defective. Cruz attached “affidavits” with his petition at the end of which he stated that his statements were made under penalty of perjury and that the foregoing was true and correct to the best of his knowledge and belief. However, they were not notarized. Therefore, the acknowledgment 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.

{¶4} Cruz has similarly 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. Although he includes an “affidavit of prior civil action,” it is not notarized. This 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 Bd.*, 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. He also did not comply with R.C. 2969.25(C), which requires that an inmate file a certified statement from his prison cashier setting forth the balance in his private account for each of the preceding six months with a poverty affidavit. He submitted his sheriff’s office trust account, but the

supporting affidavit was not notarized. This also is sufficient reason to deny the mandamus, deny indigency status, and assess costs against the relator. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842; *State ex rel. Hunter v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 176, 2000-Ohio-285, 724 N.E.2d 420; 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.

{¶5} Finally, Cruz is pursuing an adequate remedy at law. R.C. 2937.222(D) provides that a trial court may deny bail for certain serious offenses, such as a first-degree felony, after a hearing in which the defendant is provided with full due process protections. If the court denies bond after such a hearing, then the defendant's remedy is an appeal. Cruz is pursuing this remedy by filing a motion to reduce or reinstate bond.² Habeas corpus, like other extraordinary writ actions, is not available where there is an adequate remedy at law. *Drake v. Tyson-Parker*, 101 Ohio St.3d 210, 2004-Ohio-711, 803 N.E.2d 811.

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

{¶7} Petition denied.

²Cruz's attorney filed this motion on December 21, 2016. The trial court, pursuant to R.C. 2937.222(D), should resolve this motion forthwith.

FRANK D. CELEBREZZE, JR., JUDGE

EILEEN T. GALLAGHER, P.J., and
ANITA LASTER MAYS, J., CONCUR