

[Cite as *State v. Lucas*, 2019-Ohio-550.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107978

STATE OF OHIO

RESPONDENT

vs.

CHARLES LUCAS

PETITIONER

JUDGMENT:
PETITION DENIED

Writ of Habeas Corpus
Motion No. 524116
Order No. 525006

RELEASE DATE: February 12, 2019

FOR PETITIONER

Charles Lucas, pro se
Inmate No. 0321896
Cuyahoga County Jail
P.O. Box 5600
Cleveland, Ohio 44101

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: Tasha Forchione
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

EILEEN T. GALLAGHER, P.J.:

{¶1} Petitioner, Charles Lucas, seeks a writ of habeas corpus. He challenges his confinement, claiming that false testimony was adduced to secure guilty verdicts against him in an underlying criminal case. Respondent, the state, filed a motion for summary judgment, which we grant because of the numerous procedural defects on the face of the petition.

I. Procedural History

{¶2} According to the filings in this case, Lucas is the defendant in a criminal case, *State v. Lucas*, Cuyahoga C.P. No. CR-16-609934-A. In January 2018, he was found guilty of numerous charges by a jury, but has yet to be sentenced. A review of the publicly available electronic docket¹ in this case reveals that the delay in sentencing is the result of Lucas filing six

¹The Supreme Court of Ohio has approvingly cited cases holding that a court may take notice of a docket that is publicly available via the internet. *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, 874 N.E.2d 516, ¶ 8, citing *Doe v. Golden & Walters, P.L.L.C.*, 173 S.W.3d 260, 265 (Ky.App.2005); *Leatherworks Partnership v. Berk Realty, Inc.*, N.D. Ohio No. 4:04 CV 0784, 2005 U.S. Dist. LEXIS 27887, 2 (Nov. 15, 2005).

notices of appeal despite the fact that there appears to be no final order in the case, the recusal of at least one judge, and the firing and appointment of numerous attorneys before Lucas was allowed to represent himself. All of this occurred after Lucas was found guilty. Lucas has also filed two original actions in this court stemming from this case. This brief history demonstrates a pattern of filings with this court that are fatally procedurally deficient, bordering on frivolous. Five of the six appeals were dismissed for procedural irregularities, and the sixth was dismissed as untimely. Should this pattern of filings continue, this court will have no choice but to deem Lucas a vexatious litigant. *See* Loc.App.R. 23. Further, this flurry of activity, together with the myriad of motions Lucas has filed in the lower court, has deprived the trial court of the ability to timely impose sentence.

{¶3} The instant petition was filed by Lucas on December 13, 2018. The state timely moved for summary judgment pointing out the numerous procedural defects and addressing the merits of Lucas's complaint. Lucas failed to timely respond to the state's motion. The action is now ripe for adjudication.

II. Law and Analysis

{¶4} The petition fails to comply with procedural requirements set forth in R.C. 2725.04, Civ.R. 10, and R.C. 2969.25, necessitating denial of the request for writ of habeas corpus.

A. R.C. 2725.04

{¶5} R.C. 2725.04 dictates the necessary elements of a petition for writ of habeas corpus. It states that, among other things,

See also State v. Chairperson of the Ohio Adult Parole Auth., 10th Dist. Franklin No. 17AP-651, 2018-Ohio-1620, ¶ 23. The docket in the present case is publicly available on the Cuyahoga County Clerk of Courts website.

[a]pplication for the writ of habeas corpus shall be by petition, signed and verified either by the party for whose relief it is intended, or by some person for him, and shall specify * * * [t]he officer, or name of the person by whom the prisoner is so confined or restrained * * *[, and a] copy of the commitment or cause of detention of such person shall be exhibited, if it can be procured without impairing the efficiency of the remedy; or, if the imprisonment or detention is without legal authority, such fact must appear.

{¶6} Taking these elements in turn, Lucas's petition is not verified either by him or another party. Lack of verification requires dismissal. *State ex rel. Battin v. Scott*, 10th Dist. Franklin No. 15AP-688, 2016-Ohio-3343; *Jones v. Reid*, 8th Dist. Cuyahoga No. 94694, 2010-Ohio-2234.

{¶7} Lucas failed to name the warden in whose custody he is entrusted as a party in his petition. Instead he captioned the petition as state of Ohio against Charles Lucas. The petition must be brought against the individual who maintains custody over Lucas as respondent. R.C. 2725.04(B). The caption of the petition fails to set forth any such party. Failure to properly name the respondent in a petition for habeas corpus is fatal to the claim. *Williams v. O'Malley*, 8th Dist. Cuyahoga No. 94862, 2010-Ohio-3897, _ 15, citing *State ex rel. Sherrills v. State*, 91 Ohio St.3d 133, 742 N.E.2d 651 (2001); *Boyd v. McGinty*, 8th Dist. Cuyahoga No. 84476, 2004-Ohio-2704; and *Rockwell v. Geauga Cty. Court of Common Pleas*, 11th Dist. Geauga No. 2005-G-2661, 2005-Ohio-5762 .

{¶8} Finally, Lucas indicates that his commitment is the result of a verdict in the above criminal case, but fails to include a copy of the commitment papers or cause with his petition. R.C. 2725.04(D). Failure to attach those papers is fatal. *Bloss v. Rogers*, 65 Ohio St.3d 145, 146, 602 N.E.2d 602 (1992).

{¶9} Lucas failed to comply with the requirements set forth in R.C. 2725.04 in many respects, all of which are fatal to his petition.

B. Civ.R. 10(A)

{¶10} “Civ.R. 10(A) requires a petitioner to list the proper parties and their respective addresses in the case caption.” *Greene v. Turner*, 151 Ohio St.3d 513, 2017-Ohio-8305, 90 N.E.3d 901, ¶ 8. Lucas has failed to include the names and addresses for each party in the case caption as required by this rule. Lucas did not include any addresses for the parties in the case caption. Lucas also failed to properly include the warden as respondent. Again, this defect is fatal. *Kneuss v. Sloan*, 146 Ohio St.3d 248, 2016-Ohio-3310, 54 N.E.3d 1242, ¶ 11.

C.R.C. 2969.25

{¶11} Lucas’s petition also does not comply with mandatory requirements set forth in R.C. 2969.25.

{¶12} R.C. 2969.25(A) indicates that an inmate instituting a civil action against a government entity or employee shall include an affidavit of prior civil actions or appeals of prior civil actions filed within the previous five years. Lucas failed to include such an affidavit with his petition. This is grounds for dismissal of the petition. *State ex rel. Hall v. Mohr*, 140 Ohio St.3d 297, 2014-Ohio-3735, 17 N.E.3d 581, ¶ 4.

{¶13} If an inmate-petitioner seeks waiver of the filing fee to initiate a civil action, R.C. 2969.25(C) requires that the inmate file an affidavit of indigency along with a certified statement from the prison cashier setting forth the balance in the petitioner’s private account for each of the preceding six months. Lucas did not submit any such affidavit and certification. In the alternative, Lucas failed to pay the filing fee required to institute an original action as required by Loc.App.R. 45(A). His noncompliance with R.C. 2969.25(C) and Loc.App.R. 45(A) 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.

{¶14} Recently, the Ohio Supreme Court reaffirmed that “[n]oncompliance with any of these procedural requirements is fatal to a habeas corpus petition and warrants dismissal of the inmate’s action.” *Greene*, 151 Ohio St.3d 513, 2017-Ohio-8305, 90 N.E.3d 901, at ¶ 5, citing *Al’shahid v. Cook*, 144 Ohio St.3d 15, 2015-Ohio-2079, 40 N.E.3d 1073, ¶ 8, 10 (R.C. 2969.25(C) and 2725.04(D)); *Kneuss*, 146 Ohio St.3d 248, 2016-Ohio-3310, 54 N.E.3d 1242, at ¶ 11 (Civ.R. 10(A)).

{¶15} Accordingly, this court grants respondent’s motion for summary judgment. Costs assessed against Lucas. 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).

{¶16} Petition denied.

EILEEN T. GALLAGHER, PRESIDING JUDGE _____

MARY J. BOYLE, J., and
ANITA LASTER MAYS, J., CONCUR