

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

STATE EX REL. KEVIN A. STEWART, JR.,	:	
	:	
Petitioner,	:	No. 109390
	:	
v.	:	
	:	
DOUGLAS FENDER, WARDEN,	:	
	:	
Respondent.	:	

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JOURNAL ENTRY AND OPINION

**JUDGMENT:** PETITION DISMISSED  
**DATED:** April 22, 2020

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Writ of Habeas Corpus  
Motion No. 536217  
Order No. 537419

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***Appearances:***

Kevin A. Stewart, Jr., *pro se*.

Dave Yost, Ohio Attorney General, and M. Scott Criss,  
Assistant Attorney General for Douglas Fender.

LARRY A. JONES, SR., J.:

{¶ 1} Petitioner, Kevin A. Stewart, Jr., seeks a writ of habeas corpus, directing respondent, Douglas Fender, warden of the Lake Erie Correctional Institution, to immediately release him. Because of a lack of jurisdiction and

numerous procedural defects, respondent's motion to dismiss is granted, and the petition is dismissed.

### I. Procedural History

{¶ 2} On January 15, 2020, Stewart filed a petition for a writ of habeas corpus. There, he alleged that he is being restrained of his liberty at the Lake Erie Correctional Institution in Ashtabula County, Ohio. He further claims that his incarceration is unlawful because the Cuyahoga County Common Pleas Court “put him to trial twice for the same offense, in violation of the Double Jeopardy Clause of the Ohio and U.S. Constitution[s].” (Petition at page 2.) Stewart asserts that he was arrested on November 27, 2018, and a trial date was set. On the day of trial, the trial was continued because a victim did not appear to testify. Instead of dismissing the case, defense counsel agreed to a continuance. Stewart appears to assert that because the victim did not appear to testify on the date trial was set, this constituted a resolution of these charges. He claims that his later trial on the same charges constitutes a violation of his constitutional rights. He further claims he received ineffective assistance of trial counsel because counsel did not share discovery with Stewart and did not move for dismissal when the witness failed to appear at court to testify.

{¶ 3} In opposition, respondent filed a motion to dismiss on February 18, 2020, premised on the suggestion of a lack of jurisdiction under Civ.R. 12(H)(3). There, respondent points out numerous procedural defects in the petition and

argues that this court does not have jurisdiction to grant Stewart's request for a writ of habeas corpus pursuant to R.C. 2725.03.

## II. Law and Analysis

{¶ 4} “To be entitled to a writ of habeas corpus, a party must show that he is being unlawfully restrained of his liberty, R.C. 2725.01, and that he is entitled to immediate release from prison or confinement.” *State ex rel. Cannon v. Mohr*, 155 Ohio St.3d 213, 2018-Ohio-4184, 120 N.E.3d 776, ¶ 10. A writ of habeas corpus will issue “in certain extraordinary circumstances ‘where there is an unlawful restraint of a person’s liberty and there is no adequate remedy in the ordinary course of law.’” *Johnson v. Timmerman-Cooper*, 93 Ohio St.3d 614, 616, 757 N.E.2d 1153 (2001), quoting *Pegan v. Crawmer*, 76 Ohio St.3d 97, 99, 666 N.E.2d 1091 (1996). The request for writ must be by petition, and filed in the territorial jurisdiction of the institution where an inmate is housed. R.C. 2725.03. This statute specifically limits the ability of courts to issue writs of habeas corpus, providing:

If a person restrained of his liberty is an inmate of a state benevolent or correctional institution, the location of which is fixed by statute and at the time is in the custody of the officers of the institution, no court or judge other than the courts or judges of the county in which the institution is located has jurisdiction to issue or determine a writ of habeas corpus for his production or discharge. Any writ issued by a court or judge of another county to an officer or person in charge at the state institution to compel the production or discharge of an inmate thereof is void.

{¶ 5} Stewart's petition establishes that he is currently incarcerated in a state correctional institution in Ashtabula County, Ohio. This is not within the

territorial jurisdiction of the Eighth District Court of Appeals, which is limited to Cuyahoga County, Ohio. This court has no jurisdiction to direct respondent to release Stewart. A petition for writ of habeas corpus filed by an inmate housed in a state correctional institution must be filed in the jurisdiction where the inmate is confined. *Bridges v. McMackin*, 44 Ohio St.3d 135, 541 N.E.2d 1035 (1989). As such, respondent is entitled to the dismissal of this action.

{¶ 6} Further, a petition for a writ of habeas corpus must include all the commitment papers related to a person's incarceration. R.C. 2725.04(D). The failure to include all the relevant documents with the petition requires dismissal. *State ex rel. Kerr v. Turner*, Slip Opinion No. 2020-Ohio-459, ¶ 6, quoting *Pence v. Bunting*, 143 Ohio St. 3d 532, 2015-Ohio-2026, 40 N.E.3d 1058, ¶ 6-7.

{¶ 7} Here, Stewart attached a partial docket from a criminal case that does not include a journal entry of sentence or other material documenting the cause of incarceration. The partial docket entry and case summary attached to the petition is insufficient to satisfy the requirement set forth in R.C. 2725.04(D). Accordingly, respondent is entitled to the dismissal of the petition.

{¶ 8} Stewart, an inmate in a state correctional institution instituting a suit against a state official, must also comply with R.C. 2969.25. *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, 797 N.E.2d 982, ¶ 6. This statute requires such an individual to include a complete list of actions and appeals that he or she has instituted against a government official or agency within the past five years. R.C. 2969.25(A). The list, in the form of an affidavit, must include a description of those

actions and the outcome of each. The failure to do so requires dismissal of the action. “Compliance with R.C. 2969.25(A) is mandatory, and failure to comply will warrant dismissal.” *Robinson v. Fender*, Slip Opinion No. 2020-Ohio-458, ¶ 6, quoting *State v. Henton*, 146 Ohio St.3d 9, 2016-Ohio-1518, 50 N.E.3d 553, ¶ 3.

{¶ 9} Further, R.C. 2969.25(C) requires an individual who wishes to waive the filing fee to initiate an original action to include an affidavit detailing his or her inmate account for the preceding six months as certified by the institutional cashier; as well as a statement detailing all other cash and things of value owned by the inmate. The failure to comply with the requirements of R.C. 2969.25(C) is grounds for dismissal of the petition. *State ex rel. Ellis v. Wainwright*, 157 Ohio St.3d 279, 2019-Ohio-2853, 135 N.E.3d 761, ¶ 6.

{¶ 10} Stewart included no such affidavits with his petition and he failed to pay the filing fee necessary for the initiation of this action. This failure is grounds for dismissal of the action and the imposition of costs. *Id.*

{¶ 11} Due to the lack of jurisdiction and other procedural defects, we grant respondent’s motion to dismiss. Stewart’s petition for a writ of habeas corpus is dismissed. Costs to petitioner. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶ 12} Petition dismissed.

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LARRY A. JONES, SR., JUDGE

EILEEN T. GALLAGHER, A.J., and  
MICHELLE J. SHEEHAN, J., CONCUR