

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

JOHN L. TURNER, JR.,	:	PER CURIAM
	:	MEMORANDUM OPINION
Relator,	:	
	:	CASE NO. 2015-L-014
- vs -	:	
CHARLES COULSON, LAKE COUNTY	:	
CHIEF PROSECUTOR, et al.,	:	
	:	
Respondents.	:	

Original Action for Writ of Habeas Corpus.

Judgment: Petition dismissed.

John L. Turner, Jr., c/o Lake County Jail, 104 East Erie Street, Painesville, OH 44077 (Relator).

Charles E. Coulson, Lake County Prosecutor, and Jacqueline M. O'Donnell, Assistant Prosecuting Attorney, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Respondents).

PER CURIAM.

{¶1} Relator, John L. Turner, Jr., seeks a writ of habeas corpus against respondents, Lake County Prosecutor Charles Coulson and Lake County Sheriff Daniel Dunlap, for his immediate release from imprisonment at the Lake County Jail. For the reasons that follow, this action is dismissed.

{¶2} Relator, acting pro se, filed his verified petition for writ of habeas corpus on November 25, 2014. In his petition, he alleges that he is being illegally held in jail by Sheriff Dunlap pursuant to the Double Jeopardy Clause of the Fourteenth Amendment. He also alleges that on April 10, 2014, he was sentenced by the Lake County Court of Common Pleas in Case No. 14CR000533 to 200 days in prison for various crimes and that said prison term ended on October 27, 2014. Along with his petition, relator filed a “poverty affidavit to comply with O.R.C. 2969.25(C) for waiver of prepayment of the court’s full filing fee.” In his affidavit, relator said that he does not have sufficient funds to pay the filing fee and that he has no cash, real estate, automobile, or anything of value.

{¶3} In his petition, relator fails to allege the offenses for which he was indicted. While he alleges he was found guilty, he does not specify whether he was tried by a jury or the court. He alleges he was sentenced on counts one, two, and 22 of the indictment, but does not state what those offenses are; the sentence imposed on him for each offense; or whether the sentences were imposed concurrently or consecutively. He simply alleges that he was sentenced to 200 days and that this term has ended.

{¶4} Although the petition identified the court in which it was filed as the Eleventh District Court of Appeals, the caption included the case number of the criminal case in which relator was convicted, i.e., 14CR000533. As a result, the petition was filed and docketed by the common pleas court in said criminal case.

{¶5} Subsequently, in a judgment, dated January 9, 2015, the common pleas court ruled on the petition as well as 49 motions that relator had filed pro se in his criminal case. The common pleas court ruled on relator’s petition not realizing that it

was meant to be filed in this court. On February 4, 2014, during a pretrial in relator's criminal case, he advised the common pleas court that he intended the petition to be filed in the Eleventh District. As a result, on February 5, 2015, the common pleas court entered a judgment vacating that portion of its January 9, 2015 entry ruling on the petition for writ of habeas corpus, leaving the remainder of that entry in full force and effect, and ordering the clerk of courts to file the petition for writ of habeas corpus in this court.

{¶6} Upon review of relator's petition, it is immediately apparent that it is defective on its face. A court may sua sponte dismiss a petition for an extraordinary writ for failure to state a claim upon which relief can be granted if the petition is frivolous or the claimant obviously cannot prevail on the facts alleged in the petition. *Hill v. Kelly*, 11th Dist. Trumbull No. 2011-T-0094, 2011-Ohio-6341, ¶4, citing *State ex rel. Thompson v. Spon*, 83 Ohio St.3d 551, 553 (1998); *State ex rel. Bruggeman v. Ingraham*, 87 Ohio St.3d 230, 231 (1999).

{¶7} Relator's petition fails to comply with several statutory requirements for habeas relief. One of these requirements is that the relator must file all pertinent commitment papers along with the petition. R.C. 2725.04(D). Attaching only some of the paperwork is insufficient. *State ex rel. Johnson v. Ohio Dept. of Rehab. & Corr.*, 95 Ohio St.3d 70, 71 (2002). If any of the required commitment papers is not included with the petition, it is defective. *Id.* The Ohio Supreme Court has held that the commitment papers are necessary for a complete understanding of the petition. *Bloss v. Rogers*, 65 Ohio St.3d 145, 146 (1992). When a petition is presented to a court that does not comply with R.C. 2725.04(D), there is no showing of how the commitment was

procured, and there is nothing before the court on which to make a determined judgment, except the bare allegations of the petition. *Id.*

{¶8} The following holding of this court in *State ex rel. Cruz v. Sloan*, 11th Dist. Ashtabula No. 2014-A-0032, 2014-Ohio-5180, ¶12, is pertinent here: “Relator failed to attach the sentencing entry or any of his commitment papers. Without the full scope of relator’s commitment papers, it would be impossible for us to fully understand the petition. Due to this defect, the petition must be dismissed.”

{¶9} Further, when an inmate initiates any civil action or appeal against a government employee or entity, such as respondents, R.C. 2969.25(A) requires an affidavit of the inmate’s prior civil actions to be filed at the same time the civil action or appeal is filed. R.C. 2969.25(A) applies to habeas filings. *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, ¶6-9. Belated attempts to file this affidavit cannot correct noncompliance with the statute. *Id.* at ¶9. Failure to timely file the required affidavit of prior civil actions mandates dismissal of the petition. *State ex rel. Washington v. Ohio Adult Parole Auth.*, 87 Ohio St.3d 258, 259 (1999).

{¶10} Relator has not filed an affidavit of his prior civil actions. For this additional reason, the petition is defective and must be dismissed. *Cruz, supra*, at ¶14.

{¶11} Moreover, R.C. 2969.25(C) requires an inmate, who files a civil action or appeal against a government entity or employee, seeking waiver of the filing fee to file an affidavit of indigency. Along with that affidavit, the inmate must also file a certified statement of the inmate’s account balance for each of the previous six months and a statement of all cash and items of value owned by the inmate. “The requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate’s

action to dismissal.” *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, ¶5. Failure to file a statement of the inmate’s account balance and assets at the time of the initial filing of the petition results in dismissal of the petition. *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, ¶1. In *Hazel, supra*, the Ohio Supreme Court held that the error cannot be corrected after the initial filing and is fatal to the petition.

{¶12} While relator filed an affidavit stating he has no funds or other assets, he failed to file his inmate account statement. For this additional reason, the petition is defective and must be dismissed. *Cruz, supra*, at ¶16.

{¶13} In summary, relator failed to file any commitment papers with his petition. He also failed to file an affidavit of prior civil actions along with the petition. In addition, he failed to file his inmate account statement. For any one or more of these three reasons, relator did not state a facially valid habeas-corpus claim, and he obviously cannot prevail on his petition. Therefore, the petition must be and is hereby dismissed.

{¶14} For the reasons stated in the memorandum opinion of this court, this action is dismissed.

TIMOTHY P. CANNON, P.J., DIANE V. GRENDALL, J., CYNTHIA WESTCOTT RICE, J., concur.