

[Cite as *State v. Willeke*, 2012-Ohio-1755.]

COURT OF APPEALS
MORROW COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO
Respondent

-vs-

JOHN I. WILLEKE
Petitioner

JUDGES:
Hon. Patricia A. Delaney, P.J.
Hon. William B. Hoffman, J.
Hon. Sheila G. Farmer, J.

Case No. 12-CA-1

OPINION

CHARACTER OF PROCEEDING: Writ of Habeas Corpus

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: April 18, 2012

APPEARANCES:

Petitioner

Respondent

JOHN I. WILLEKE
5851 CO RD 9
Edison, Ohio 43320

NO APPEARANCE

Hoffman, J.

{¶1} Petitioner, John I. Willeke, has filed a petition for Writ of Habeas Corpus alleging unlawful detention based upon his contention that his indictment was defective. We find it unnecessary to address the claims raised in the Petition because Petitioner has failed to comply with the procedural requirements for a habeas petition.

{¶2} Petitioner captioned the petition as the “State of Ohio v. John I Willeke.” For this reason, Petitioner has failed to name a proper Respondent. See *Tate v. Bernard* (Nov. 21, 2001), Trumbull App. No. 2001–T–0087, 2001 WL 1497206 (“the writ will lie only against the individual who is directly responsible for keeping the petitioner in custody”); *Jackson v. State* (Apr. 19, 2002), Cuyahoga App. No. 81007, 2002 WL 737495 (dismissal of petition for writ of habeas corpus appropriate when petitioner named the state rather than the sheriff—his custodian as the respondent).

{¶3} A review of the complaint reveals Petitioner has also failed to attach the necessary commitment papers in compliance with R.C. 2725.04(D).

{¶4} The Supreme Court has held failure to comply with this requirement is a fatal defect which cannot be cured, “[C]ommitment papers are necessary for a complete understanding of the petition. Without them, the petition is fatally defective. 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, of course, the bare allegations of petitioner's application.” *Bloss v. Rogers*, 65 Ohio St.3d 145, 602 N.E.2d 602.

{¶5} We find failure to include all pertinent commitment papers has made a complete understanding of the petition impossible.

{¶6} We further note a “Court of Appeals [is] required to dismiss [a] petition for habeas corpus sua sponte, where defendant failed to verify the petition for habeas corpus, support his complaint with an affidavit specifying the details of the claim, attach a copy of commitment or cause of detention to petition, name the correct respondent, or attach an affidavit describing each civil action or appeal filed by the relator within previous five years in any state or federal court. R.C. 2725.04(B, D), 2969.25.” *Melton v. State* 2002 WL 31040689 (Ohio App. 8 Dist.).

{¶7} The petition filed does not contain an affidavit detailing Petitioner's prior civil actions.

{¶8} Petitioner's failure to include these items requires dismissal of this case.

By: Hoffman, J.

Delaney, P.J. and

Farmer, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

