

[Cite as *Orr v. Lazaroff*, 2016-Ohio-3315.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DARLLEL B. ORR

Petitioner

-vs-

ALAN LAZAROFF, WARDEN

Respondent

JUDGES:

Hon. Sheila G. Farmer, P. J.

Hon. W. Scott Gwin, J.

Hon. John W. Wise, J.

Case No. 15 CA 78

OPINION

CHARACTER OF PROCEEDING:

Habeas Corpus

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

June 8, 2016

APPEARANCES:

For Petitioner

DARLLEL B. ORR, PRO SE
MANSFIELD CORR. INSTITUTION
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Mansfield, Ohio 44901

For Respondent

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JONATHAN R. KHOURI
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Wise, J.

{¶1} Petitioner, Darlrel B. Orr, has filed a petition for Writ of Habeas Corpus alleging unlawful detention based upon the contention his constitutional rights were violated due to a fabricated affidavit making the search warrant defective. Respondent has filed a motion to dismiss for failing to comply with the procedural requirements for a habeas corpus petition and for failure to state a claim upon which relief may be granted. Petitioner has filed a motion for judgment on the pleadings.

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

{¶3} The Supreme Court has held failure to comply with this requirement is a fatal defect which cannot be cured, "Such a failure is fatal to a petition for habeas corpus." *State ex rel. Arroyo v. Sloan*, 142 Ohio St.3d 541, 2015-Ohio-2081, 33 N.E.3d 56, 57, ¶ 3 (2015).

{¶4} "[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. See also, *Boyd v. Money*, 82 Ohio St.3d 388, wherein the Supreme Court held, "Habeas corpus petitioner's failure to attach pertinent commitment papers to his petition rendered petition fatally defective, and petitioner's subsequent attachment of commitment papers to his post-judgment motion did not cure the defect." R.C. § 2725.04(D).

{¶5} Petitioner's failure to attach all necessary commitment papers to his initial petition is fatal, and the petition must be dismissed.

{¶6} For these reasons, Petitioner's petition for writ of habeas corpus is dismissed.

By: Wise, J.

Farmer, P. J., and

Gwin, J., concur.

JWW/d 0511