

[Cite as *Midgett v. Richland Cty. Sheriff*, 2020-Ohio-3465.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DAJUAN MIDGETT	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Petitioner	:	Hon. John W. Wise, J.
	:	Hon. Earle E. Wise, Jr., J.
-vs-	:	
	:	
RICHLAND COUNTY SHERIFF	:	Case No. 2020 CA 0045
	:	
Respondent	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Writ of Habeas Corpus

JUDGMENT: Dismissed

DATE OF JUDGMENT: June 22, 2020

APPEARANCES:

For Petitioner

DAJUAN MIDGETT - #57301
13 East 2nd Street
Mansfield, OH 44902

For Respondent

JOSEPH C. SNYDER
38 South Park Street
2nd Floor
Mansfield, OH 44902

Wise, Earle, J.

{¶ 1} On May 26, 2020, Petitioner, DaJuan Midgett, refiled a Petition for Writ of Habeas Corpus against Respondent, Richland County Sheriff. The Richland County Prosecutor filed a Motion to Dismiss under Civ.R. 12(B)(6). On May 14, 2020, we previously dismissed a Petition for Writ of Habeas Corpus filed by Mr. Midgett. See *DaJuan Midgett v. Richland County Sheriff*, 5th Dist. No. 20CA41, 2020-Ohio-2966. Due to the following deficiencies, we grant the prosecutor's Motion to Dismiss.

{¶ 2} First, the petition is not verified as required by R.C. 2725.04. The failure to verify the petition requires dismissal. *State v. Vore*, 91 Ohio St.3d 323, 327, 744 N.E.2d 763 (2001); *State ex rel. Crigger v. Ohio Adult Parole Auth.*, 82 Ohio St.3d 270, 272, 695 N.E.2d 254 (1998). Second, Mr. Midgett did not comply with R.C. 2725.04(D), which requires a copy of the commitment or cause of detention be attached to the petition for writ of habeas corpus. Without the commitment papers, the writ of habeas corpus is fatally defective. *Brown v. Rogers*, 72 Ohio St.3d 339, 341, 650 N.E.2d 422 (1995).

{¶ 3} For the foregoing reasons, we grant the Motion to Dismiss under Civ.R. 12(B)(6). The clerk of courts is hereby directed to serve upon all parties not in default notice of this judgment and its date of entry upon the journal.

{¶ 4} MOTION TO DISMISS IS GRANTED.

{¶ 5} PETITION DISMISSED.

{¶ 6} COSTS TO PETITIONER.

{¶ 7} IT IS SO ORDERED.

By Earle E. Wise, Jr., J.

Hoffman, P.J. and

Wise, John, J. concur.

EEW/amc