

[Cite as *Womack v. Warden of Belmont Correctional Inst.*, 2005-Ohio-1344.]

STATE OF OHIO, BELMONT COUNTY  
IN THE COURT OF APPEALS  
SEVENTH DISTRICT

GENO WOMACK,	)	
	)	CASE NO. 04 BE 58
PETITIONER,	)	
	)	
- VS -	)	OPINION
	)	AND
	)	JOURNAL ENTRY
WARDEN OF THE BELMONT	)	
CORRECTIONAL INSTITUTION,	)	
STATE OF OHIO, et al.,	)	
	)	
RESPONDENTS.	)	

CHARACTER OF PROCEEDINGS: Petition for Writ of Habeas Corpus.

JUDGMENT: Petition Dismissed.

APPEARANCES:  
For Petitioner: Geno Womack, Pro-se  
Belmont Correctional Institution  
P.O. Box 540  
St. Clairsville, OH 43950

For Respondents: Jim Petro  
Ohio Attorney General  
Stuart A. Cole  
Assistant Attorney General  
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150 East Gay Street, 16th Floor  
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JUDGES:  
Hon. Joseph J. Vukovich  
Hon. Cheryl L. Waite  
Hon. Mary DeGenaro

Dated: March 14, 2005

Per Curiam:

{¶1} On November 30, 2004, Petitioner Geno Womack filed a Petition for Writ of Habeas Corpus, asserting that he is being unlawfully restrained. In response, Respondent Michele Eberlin, Warden, moved to dismiss the petition for failure to comply with the statutorily prescribed steps for petitioning for a Writ of Habeas Corpus. For the following reasons, the petition is dismissed.

#### Substantive Deficiencies

{¶2} It is well established that the writ of habeas corpus will only be issued in certain extraordinary circumstances of unlawful restraint of a person's liberty where there is no adequate legal remedy. *State ex rel. Pirman v. Money* (1994), 69 Ohio St.3d 591, 593. Habeas corpus is not to be used as a substitute for other forms of action, such as direct appeal. *Adams v. Humphreys* (1986), 27 Ohio St.3d 43. Also, the availability of proceedings for post-conviction relief is grounds for denying habeas corpus. *Gerhart v. Tate* (1987), 33 Ohio St.3d 120.

{¶3} In his application for habeas relief, Petitioner maintains that when sentenced to community control, he was not informed of the specific prison sentence he would receive if he violated the terms of community control. Despite the fact that he has been sentenced to a prison term for violating community control, Petitioner now claims he should be released because his initial term of community control has expired.

{¶4} Habeas corpus is not a proper remedy for reviewing allegations of sentencing errors when that sentence was made by a court of proper jurisdiction. R.C. 2725.05; *Majoros v. Collins* (1992), 64 Ohio St.3d 442; *State ex rel. Wynn v. Baker* (1991), 61 Ohio St.3d 464. Although Petitioner claims that the court lacked jurisdiction to sentence him to a prison term, he has mistaken the alleged impropriety of the trial court's judgment for lack of jurisdiction. Furthermore, direct appeal or post-conviction relief are the proper avenues to address such alleged errors in sentencing.

*State v. Brooks*, 2004 -Ohio- 4746, 103 Ohio St.3d 134; *Blackburn v. Jago* (1988), 39 Ohio St.3d 139, 139.

{15} Where a Petitioner possessed the adequate legal remedies of appeal and post-conviction to challenge his sentencing, a petition for habeas corpus may properly be dismissed. See *State ex rel. Massie v. Rogers* (1997), 77 Ohio St.3d 449, 450. Petitioner was never denied the chance to directly appeal his sentence or to petition for post-conviction relief. Thus, the challenge to his sentence by way of habeas corpus is improper and must be denied.

#### Procedural Deficiencies

{16} Even if Petitioner's claims were recognizable in habeas corpus, the petition would still be dismissed for failure to comply with the statutory requirements of a petition for habeas corpus. R.C. 2725.06 states that "when a petition for writ of habeas corpus is presented, if it appears that the writ ought to issue, a court or judge authorized to grant the writ must grant the writ forthwith." Therefore, it necessarily follows that if a petition does not appear valid on its face, the writ cannot be granted and the petition must be dismissed.

{17} R.C. 2725.04 demands that an application for a writ of habeas corpus be "verified." In interpreting the word verify in the context of R.C. 2725.04, the Ohio Supreme Court has held that

{18} "[i]n the absence of any statutory definition of the requisite verification, we must apply the word's usual, normal, or customary meaning. *State ex rel. Cuyahoga Cty. v. State Personnel Bd. of Review* (1998), 82 Ohio St.3d 496, 499, 696 N.E.2d 1054; R.C. 1.42. 'Verification' means a 'formal declaration made in the presence of an authorized officer, such as a notary public, by which one swears to the truth of the statements in the document.' Garner, *Black's Law Dictionary* (7 Ed.1999) 1556 \* \* \*." *Chari v. Vore* (2001), 91 Ohio St.3d 323, 328.

{19} In this case, the petition is simply signed; it is not notarized or in any other way verified. Failure to verify a petition in compliance with R.C. 2725.04 is grounds for dismissal of the petition. *Sidle v. Ohio Adult Parole Auth.* (2000), 89 Ohio

St.3d 520, 520.

{¶10} Further, R.C. 2969.25(A) requires that, "At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court."

{¶11} A petition for habeas corpus is an action that is civil in nature. Failure to file an affidavit in accord with R.C. 2969.25 with a petition for habeas corpus is grounds for dismissal of the petition. *State ex rel. Zanders v. Ohio Parole Bd.* (1998), 82 Ohio St.3d 421; *Richards v. Tate*, 7th Dist. No. 01-BA-51, 2002-Ohio-436. Petitioner did not file such an affidavit with this petition, which requires dismissal.

{¶12} For the above stated reasons, the petition for habeas corpus is dismissed. Costs taxed against Petitioner. Final order. Clerk to serve notice as provided by the Civil Rules.

Vukovich, J., concurs.

Waite, J., concurs.

DeGenaro, J., concurs.