

[Cite as *Thomas v. Belmont Corr. Inst.*, 2017-Ohio-1133.]

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

State ex rel. BARRY L. THOMAS)	
)	
PETITIONER)	
)	CASE NO. 16 BE 0065
VS.)	
)	OPINION
MARY POTTER, WARDEN)	AND
Belmont Correctional Institution, et al.)	JUDGMENT ENTRY
)	
RESPONDENTS)	

CHARACTER OF PROCEEDINGS: Petition for Writ of Habeas Corpus

JUDGMENT: Dismissed.

APPEARANCES:
For Petitioner

Barry L. Thomas, Pro-se
BECI Dorm 6-A82
68518 Bannock Road
State Route 331
St. Clairsville, Ohio 43950-0540

For Respondent

Attorney Michael DeWine
Ohio Attorney General
Attorney Maura O'Neill Jaite
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JUDGES:

Hon. Mary DeGenaro
Hon. Cheryl L. Waite
Hon. Carol Ann Robb

Dated: March 17, 2017

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PER CURIAM.

{¶1} Petitioner Barry L. Thomas has filed a pro se petition for writ of habeas corpus claiming his incarceration is unlawful because the provisions of R.C. 2967.28 (Post-release-control) were “negligently ignored” at the time of his sentencing. Respondents have answered by filing a motion to dismiss and/or summary judgment motion.

{¶2} Thomas’ petition provides no information concerning his conviction and sentence. Most notably, he did not attach his commitment papers to the petition. R.C. 2725.04 requires the following:

Application for the writ of habeas corpus shall be by petition, signed and verified either by the party for whose relief it is intended, or by some person for him, and shall specify:

* * *

(D) A copy of the commitment or cause of detention of such person shall be exhibited, if it can be procured without impairing the efficiency of the remedy; or, if the imprisonment or detention is without legal authority, such fact must appear.

{¶3} The Ohio Supreme Court has explained, “[t]hese commitment 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, 146, 602 N.E.2d 602 (1992). The papers must be included with the petition and failure to file them cannot be cured by filing them at some later point in the habeas proceedings. *Boyd v. Money*, 82 Ohio St.3d 388, 389, 696 N.E.2d 568 (1998); *Davis v. Banks*, 7th Dist. No. 12 NO 397, 2013-Ohio-1852, ¶ 8. In other words, the attachment of them to a subsequent pleading is insufficient to cure this defect. *Id.*

{¶14} Consequently, Respondents' motion to dismiss is hereby granted. It is the judgment and order of this court that Petitioner's habeas corpus petition is hereby dismissed.

{¶15} Costs taxed against Petitioner. Final order. Clerk to serve notice as provided by the Civil Rules.

DeGenaro, J. concurs.

Waite, J., concurs.

Robb, P.J., concurs.