

**IN THE SUPREME COURT OF OHIO**

JAMES BOGAN, : Case No. 2008-2331  
: :  
Petitioner-Appellant, : On Appeal from the  
: : Richland County  
vs. : Court of Appeals,  
: : Fifth Appellate District  
RICHARD HALL, Warden, :  
: Court of Appeals Case  
Respondent-Appellee. : No. 08CA94  
:

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**BRIEF OF APPELLEE RICHARD HALL**

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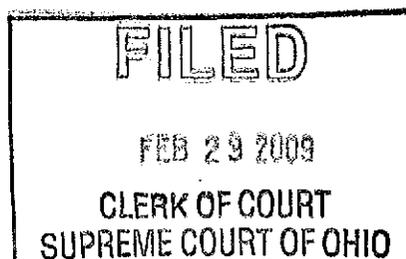
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## INTRODUCTION

A petition for writ of habeas corpus that does not include a petitioner's commitment papers is fatally defective and must be dismissed. The court of appeals correctly dismissed the petition at issue in this case because no commitment papers were attached.

Additionally, even though the court of appeals based its decision solely on the absence of commitment papers, dismissal was also appropriate because there was an adequate remedy at law by way of appeal.

## STATEMENT OF THE CASE

Petitioner-appellant James Bogan is inmate #451-645 at the Richland Correctional Institution, in Mansfield, Ohio. Richard Hall is the warden at that institution.

On October 10, 2008, Bogan filed the instant petition for writ of habeas corpus in the Fifth District Court of Appeals, Richland County. The court of appeals denied his petition on November 5, 2008. *Bogan v. Hall* (2008), 2008-Ohio-5708. Bogan appealed that decision.

Although Bogan filed his appeal as a discretionary appeal, this court determined that because the case originated in the court of appeals, that it should proceed as a direct appeal. *Bogan v. Hall* (2008), 120 Ohio St. 3d 1441, 2008-Ohio-6417.

## ARGUMENT

### Proposition of Law No. I:

**A petition is fatally defective and subject to dismissal where the petitioner failed to attach copies of all of his pertinent commitment papers.**

Ohio Revised Code Section 2725.04(D) provides that “[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 \*\*\*.” A petition for writ of habeas corpus that does not include a copy of the commitment papers is fatally defective and must be dismissed. *State ex rel. McCuller v. Callahan* (2003), 98 Ohio St. 3d 307, ¶ 4, 2003-Ohio-858; *State ex rel. Johnson v. Ohio Dep't of Rehab. & Corr.* (2002), 95 Ohio St. 3d 70, 71, 2002-Ohio-1629; *Chari v. Vore* (2001), 91 Ohio St. 3d 323, 328, 2001-Ohio-49. Failure to comply with the requirements of R.C. 2725.04(D) cannot be cured by later submission of the required documents. *Cornell v. Schotten* (1994), 69 Ohio St. 3d 466, 466-467, 1994-Ohio-74; *Boyd v. Money* (1998), 82 Ohio St. 3d 388, 389, 1998-Ohio-221.

Because Bogan failed to attach a copy of his commitment papers to his petition for writ of habeas corpus, the Fifth District Court of Appeals correctly denied his petition. Although he has attached a copy of his commitment papers to his merit brief filed with this court, such attachment does not cure the original defect in his petition. The decision of the court of appeals should therefore be affirmed.

**Proposition of Law No. II:**

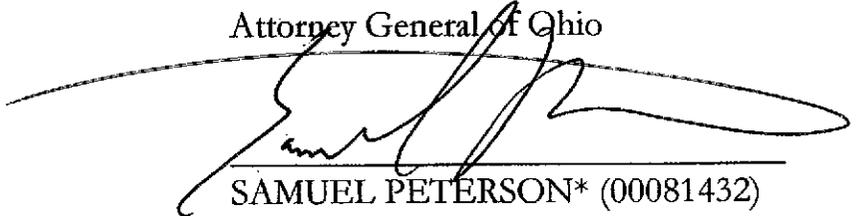
**Habeas corpus may not be used to raise claims that could have been brought on direct appeal.**

Habeas corpus is not a substitute for a direct appeal or other post-conviction remedies. *Cornell*, 69 Ohio St. 3d at 467. All of the claims raised in Bogan's appeal allege errors at trial. Because such claims could have been raised on direct appeal, habeas relief is inappropriate. Even though the court of appeals dismissed Bogan's petition because he failed to attached his commitment papers, that decision should also be affirmed because Bogan had an adequate remedy at law by way of direct appeal.

**CONCLUSION**

For the above reasons, the judgment of the Fifth District Court of Appeals dismissing Bogan's petition for writ of habeas corpus was appropriate, and this Court should affirm the decision below.

Respectfully submitted,  
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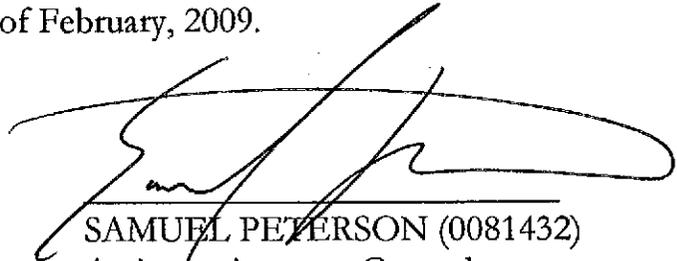
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent by regular, first-class mail to James Bogan, #451-645, Richland Correctional Institution, P.O. Box 8107, Mansfield, Ohio 44901, on the 23rd day of February, 2009.



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