

[Cite as *Wilson v. Eberlin*, 2008-Ohio-4320.]

STATE OF OHIO, BELMONT COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

TERRENCE WILSON,

PETITIONER,

- VS -

MICHELE EBERLIN, WARDEN, OF THE
BELMONT CORRECTIONAL INSTITUTION,)

- AND -

TERRY COLLINS, DIRECTOR, OF THE
DEPT. OF REHAB. AND CORR.,

RESPONDENTS.

CASE NO. 08 BE 9

OPINION
AND
JUDGMENT ENTRY

CHARACTER OF PROCEEDINGS:

Petition for Writ of Habeas Corpus

JUDGMENT:

Petition dismissed.

APPEARANCES:

For Petitioner:

Attorney Robert E. Davis
55 Public Square, Suite 1500
Cleveland, OH 44113-1998

For Respondents:

Michele Eberlin, Warden
Belmont Correctional Institution
68518 Bannock Rd., State Route 331
P.O. Box 540
St. Clairsville, OH 43950

Terry J. Collins, Director of the
Dept. of Rehab. and Corr.
1050 Freeway Drive, North
Columbus, OH 43229

JUDGES:

Hon. Mary DeGenaro
Hon. Joseph J. Vukovich
Hon. Cheryl L. Waite

Dated: August 21, 2008

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PER CURIAM:

{¶1} This case involves an original action to this court on a petition for a writ of habeas corpus by Petitioner on May 6, 2008. Respondent has not answered the petition and Petitioner has moved for summary judgment. However, we must dismiss this petition for failing to properly invoke this court's jurisdiction.

{¶2} R.C. 2725.04(D) requires that a person seeking a writ of habeas corpus attach "[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." The failure to attach commitment papers is a defect which is fatal to a petition for a writ of habeas corpus. *Waites v. Gansheimer*, 110 Ohio St.3d 250, 2006-Ohio-4358, at ¶7.

{¶3} In addition, Petitioner has failed to comply with R.C. 2969.25(A), which requires an inmate who commences a civil action against a government entity or employee to file "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" at the time the inmate commences the action. This also warrants dismissal of the petition. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 1998-Ohio-0218.

{¶4} For these reasons, Petitioner's petition for a writ of habeas corpus is dismissed sua sponte.

{¶5} Costs taxed against Petitioner. Final order. Clerk to serve notice on the parties as provided by the Ohio Rules of Civil Procedure.

DeGenaro, P.J., concurs.

Vukovich, J., concurs.

Waite, J., concurs.