

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO, EX REL.
DELBERT M. FOWLER, III,

Petitioner,

v.

RICHARD A. BOWEN, JR., WARDEN,

Respondent.

OPINION AND JUDGMENT ENTRY
Case No. 21 MA 0088

Writ of Habeas Corpus

BEFORE:

David A. D'Apolito, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:

Dismissed.

Atty. Nicholas S. Cerni, 755 Boardman-Canfield Road, Suite M-1, Youngstown, Ohio, 44512 for Petitioner and

Atty. Lisa K. Browning, Senior Assistant Attorney General, Criminal Justice Section, 30 East Broad Street, 23rd Floor, Columbus, Ohio 43215 for Respondent.

Dated: December 13, 2021

PER CURIAM.

{¶1} Petitioner Delbert M. Fowler III has filed an application for a writ of habeas corpus against Respondent Richard A. Bowen Jr., Warden of the Ohio State Penitentiary, where he is incarcerated. Respondent has filed a motion to dismiss. The Court sustains Respondent's motion to dismiss and dismisses the petition accordingly.

{¶2} According to Petitioner's application, he pled guilty to murder, aggravated burglary, aggravated robbery, and kidnapping in 1996. The trial court sentenced Petitioner to consecutive terms, including life in prison. Petitioner alleges he has served the aggregate minimum of his sentences. More specifically, he argues Respondent miscalculated the expiration date of his aggregate minimum terms resulting in an error when calculating the earliest date for when he became eligible for parole. Paradoxically, he acknowledges he had his first interview with the parole board in 2018, but contends it should have occurred in 2016.

{¶3} Petitioner cites to the introductory section of Chapter 2725, which authorizes a court to grant habeas corpus relief: "Whoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody such person is unlawfully deprived, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation." R.C. 2725.01. But the petition ignores the remainder of that chapter which contains specific filing requirements. The failure to satisfy these statutory requirements is generally fatal to the petition. *E.g., Day v. Wilson*, 116 Ohio St.3d 566, 2008-Ohio-82, 880 N.E.2d 919, ¶¶ 1, 4 (petition for a writ of habeas corpus that failed to include copies of all pertinent commitment papers was fatally defective). One of the more important requirements is that the petitioner must file all pertinent commitment papers relevant to the arguments being raised in the petition:

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.

R.C. 2725.04(D).

{¶4} The Ohio Supreme Court has acknowledged the necessity and importance of these papers:

These 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).

{¶5} Here, Petitioner has not included any commitment papers. Without them, it simply is not possible to even begin a preliminary evaluation of the nature of his claim. Therefore, Respondent's motion to dismiss is granted and Petitioner's original action for a writ of habeas corpus is dismissed.

{¶6} Final order. Clerk to service notice as provided by the Rules of Civil Procedure. No costs assessed.

JUDGE DAVID A. D'APOLITO

JUDGE GENE DONOFRIO

JUDGE CAROL ANN ROBB