[Cite as *Smith v. State*, 2020-Ohio-556.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CARLOS MONTEZ SMITH,	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Petitioner,	:	Hon. Craig R. Baldwin, J.
	:	Hon. Earle E. Wise, J.
-vs-	:	
	:	
STATE OF OHIO,	:	Case No. 2020 CA 00006
	:	
Respondent.	:	O P I N I O N

CHARACTER OF PROCEEDING: Writ of Habeas Corpus

JUDGMENT: Dismissed

DATE OF JUDGMENT: February 18, 2020

APPEARANCES:

For Petitioner

CARLOS MONTEZ SMITH,
#50994
Fairfield County Jail
345 Lincoln Ave
Lancaster, Ohio 43130

For Respondent

STEPHANIE L. WATSON
Principal Assistant Attorney General
Criminal Justice Section
150 East Gay Street, 16th Floor
Columbus, Ohio 43215-6001

Baldwin, J.

{¶1} On January 16, 2020, Petitioner, Carlos Montez Smith filed a "Motion of Original Action and Habeas Corpus Relief." Mr. Smith maintains the Fairfield County Municipal Court conducted an arraignment on October 28, 2019, and released him on a recognizance bond. However, on October 29, 2019, a Warrant on Complaint was filed in the Fairfield County Court of Common Pleas. Mr. Smith contends the complaint was not filed until 2:11 p.m. on October 29, 2019 and therefore, he was detained without warrant resulting in a constitutional violation.

{¶2} The Ohio Attorney General moved to dismiss Mr. Smith's writ. The Court finds the motion well-taken. If a petition does not satisfy the requirements for a properly filed petition for writ of habeas corpus or does not present a facially viable claim, it may be dismissed on motion by the respondent or sua sponte by the Court. *Flora v. State*, 7th Dist. Belmont No. 04 BE 51, 2005-Ohio-2383, ¶ 5. Mr. Smith's motion is deficient for a couple reasons.

{¶3} First, Mr. Smith's "Motion of Original Action and Habeas Corpus Relief" does not satisfy the requirements for a properly filed writ of habeas corpus because Mr. Smith filed a "motion" and a motion is not a complaint as required by Civ.R. 3(A). In *Martin v. Wayne Cty. Natl. Bank Trust*, 9th Dist. Wayne No. 03CA0079, 2004-Ohio-4194, ¶ ¶ 11-12, the court explained the difference between a "motion" and a "complaint." The court stated:

> Pursuant to Civ.R. 3(A), a party must file a complaint, and obtain service within one year from filing the complaint, in order to initiate civil proceedings. * * *

> For the purposes of Civ.R. 3(A), the filing of a motion cannot substitute for the filing of a complaint. * * * "Civ.R. 7 distinguishes a *pleading* from a *motion*. 'Under Civ.R. 7(A), only complaints, answers and replies constitute pleadings.' " * * * A complaint is a pleading that need only contain a short and plain statement of the claim showing that the party is entitled to relief. Civ.R. 8(A)(1). Where as a "motion" is defined as an application to the court for an order. Civ.R. 7(B)(1). A motion is not a pleading. * * * Thus, in the context of this case, a party cannot initiate an action by filing a motion.

(Emphasis sic.)

{¶4} *See also Pankey v. Mahoning Cty. Court of Common Pleas*, 7th Dist. Mahoning No. 13 MA 27, 2013-Ohio-1617, ¶ 4, where the court of appeals dismissed a writ of procedendo because relator attempted to commence the original action by filing a motion. The court explained: "* * * Relator has failed to properly initiate an action in procedendo. According to Civ.R. 3(A), a party must file a complaint and obtain service within one year in order to initiate a civil proceeding. Relator attempted to initiate this action by filing a motion, and a motion is not a complaint."

{¶5} Likewise, here, Mr. Smith commenced his original action for habeas corpus by filing a motion. The motion does not substitute for the filing of a complaint. Therefore, Mr. Smith's motion does not properly invoke the Court's jurisdiction.

{¶6} Second, Mr. Smith's motion improperly names the State of Ohio as respondent. R.C. 2725.04(B) requires that an application for a writ of habeas corpus specify "[t]he officer, or name of the person by whom the prisoner is * * * confined or

restrained[.]" This Court has previously held that a petition does not comply with R.C. 2725.04(B) where it identifies the State of Ohio as respondent. *See State v. Hertel*, 5th Dist. Delaware No. 18 CAA 07 0049, 2018-Ohio-5002, ¶ 32 (" In addition, the petition improperly names the State of Ohio as the respondent. R.C. 2725.04(B) requires that an application for a writ of habeas corpus specify '[t]he officer, or name of the person by whom the prisoner is * * * confined or restrained [.]' "); *State v. Harpster*, 5th Dist. Ashland No. 12-COA-29, 2012-Ohio-5967, ¶ 5 ("Further, Petitioner has not named a proper respondent who is alleged to have unlawful custody of Petitioner. Petitioner has named the State of Ohio rather than a specific person alleged to have custody of Petitioner.")

{¶7} For these reasons, Mr. Smith's "Motion of Original Action and Habeas Corpus Relief" is dismissed.

{¶8} The clerk of courts is hereby directed to serve upon all parties not in default notice of this judgment and its date of entry upon the journal. *See* Civ.R. 58(B).

{¶9} MOTION GRANTED.

{¶10} CAUSE DISMISSED.

{¶11} COSTS TO PETITIONER.

{¶12} IT IS SO ORDERED.

By: Baldwin, J.

Gwin, P.J. and

Wise, Earle, J. concur.