

The Supreme Court of Ohio

The State of Ohio on the relation of Donald L.
Missimer, Jr.

Case No. 2023-0026

v.
Jay Forshey, Warden

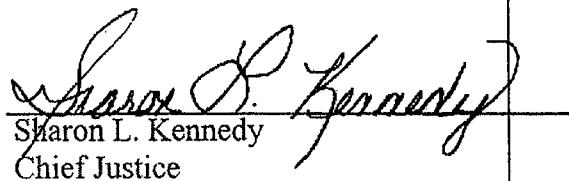
JUDGMENT ENTRY

APPEAL FROM THE
COURT OF APPEALS

This cause, here on appeal from the Court of Appeals for Noble County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is affirmed, consistent with the opinion rendered herein.

It is further ordered that a mandate be sent to and filed with the clerk of the Court of Appeals for Noble County.

(Noble County Court of Appeals; No. 22 NO 0495)



Sharon L. Kennedy
Chief Justice

The official case announcement, and opinion if issued, can be found at
<http://www.supremecourt.ohio.gov/ROD/docs/>

APPENDIX A

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Missimer v. Forshey*, Slip Opinion No. 2023-Ohio-2355.]

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2023-OHIO-2355

**THE STATE EX REL. MISSIMER, APPELLANT, v. FORSHEY, WARDEN,
APPELLEE.**

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Missimer v. Forshey*, Slip Opinion No. 2023-Ohio-2355.]

Habeas corpus—Inmate failed to file complete records of his incarcerations and releases as required by R.C. 2725.04(D)—Court of appeals’ judgment granting warden’s motion to dismiss affirmed.

(No. 2023-0026—Submitted May 16, 2023—Decided July 13, 2023.)

APPEAL from the Court of Appeals for Noble County,
No. 22 NO 0495, 2022-Ohio-4759.

Per Curiam.

{¶ 1} While incarcerated at the Noble Correctional Institution, appellant, Donald L. Missimer Jr., filed a petition for a writ of habeas corpus in the Seventh District Court of Appeals against appellee, Warden Jay Forshey. The court of appeals granted Forshey’s motion to dismiss, and Missimer has appealed. We affirm.

APPENDIX B:

SUPREME COURT OF OHIO

FACTS AND PROCEDURAL HISTORY

{¶ 2} In September 1992, Missimer pleaded guilty to burglary in the Licking County Court of Common Pleas and was sentenced to 3 to 15 years in prison.

{¶ 3} Missimer avers that he was first released on parole in May 1999. Between 1999 and 2004, Missimer was arrested and his parole was revoked several times, and he was sentenced to ten months in prison for passing bad checks. He avers that he then served a 17-year sentence in New York, that he was returned to an Ohio correctional facility in June 2021, and that he has now served more than 12 years for his 1992 burglary conviction.

{¶ 4} In July 2022, Missimer filed a petition for a writ of habeas corpus in the Seventh District, seeking his immediate release from prison. He argued that the burglary offense of which he was originally convicted carried a maximum prison term of ten years, not the 15 years to which he was sentenced, and that his maximum sentence had thus expired. Forshey filed a motion to dismiss, which Missimer opposed. The court of appeals granted Forshey's motion, and Missimer has appealed to this court as of right.

ANALYSIS

{¶ 5} Generally, a writ of habeas corpus is available only when the petitioner's maximum sentence has expired and he is being held unlawfully, *Leyman v. Bradshaw*, 146 Ohio St.3d 522, 2016-Ohio-1093, 59 N.E.3d 1236, ¶ 8, or when the sentencing court patently and unambiguously lacked subject-matter jurisdiction, *Stever v. Wainwright*, 160 Ohio St.3d 139, 2020-Ohio-1452, 154 N.E.3d 55, ¶ 8. Habeas corpus is not available when the petitioner has an adequate remedy in the ordinary course of law, unless the trial court's judgment is void for lack of jurisdiction. *State ex rel. Davis v. Turner*, 164 Ohio St.3d 395, 2021-Ohio-1771, 172 N.E.3d 1026, ¶ 8.

{¶ 6} This court reviews de novo a court of appeals' decision granting a motion to dismiss in a habeas corpus action. *State ex rel. Parker v. Black*, 168 Ohio St.3d 368, 2022-Ohio-1730, 198 N.E.3d 860, ¶ 6.

{¶ 7} Here, the court of appeals found that Missimer did not comply with R.C. 2725.04(D), which requires a habeas petitioner to attach “[a] copy of the commitment or cause of detention of such person * * * if it can be procured without impairing the efficiency of the remedy.” A petitioner’s failure to include complete records of his incarcerations and releases is fatal to his habeas petition. *State ex rel. Miller v. May*, 161 Ohio St.3d 8, 2020-Ohio-3248, 160 N.E.3d 707, ¶ 8-9. “When a petitioner has more than one pertinent conviction, he must attach all the pertinent commitment papers to his habeas corpus petition.” *State ex rel. Hawkins v. Hass*, 141 Ohio St.3d 98, 2014-Ohio-5196, 21 N.E.3d 1060, ¶ 5. In addition, commitment papers concerning parole revocations must be attached if they are relevant to the sentence calculation. *State ex rel. Crigger v. Ohio Adult Parole Auth.*, 82 Ohio St.3d 270, 272, 695 N.E.2d 254 (1998).

{¶ 8} The court of appeals was correct in finding that Missimer did not comply with the requirements of R.C. 2725.04(D). Missimer attached to his petition the journal entry sentencing him for the 1992 burglary conviction, but he did not attach any records relating to his parole releases, parole revocations, or subsequent convictions. In addition, the 1992 journal entry states that the burglary sentence was to be served consecutively to the sentence imposed in another case. Missimer did not attach any information regarding that other case. Because records relating to that case are needed to properly evaluate Missimer’s claim, this defect alone was a valid basis to dismiss Missimer’s petition.

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CONCLUSION

{¶ 9} Missimer did not attach to his petition complete records of his incarcerations and releases as required by R.C. 2725.04(D). Therefore, the court of appeals correctly dismissed his petition for a writ of habeas corpus.

Judgment affirmed.

KENNEDY, C.J., and FISCHER, DEWINE, DONNELLY, STEWART, BRUNNER, and DETERS, JJ., concur.

Donald L. Missimer Jr., pro se.

Dave Yost, Attorney General, and Maura O'Neill Jaite, Assistant Attorney General, for appellee.
