

[CAPTION]

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

(General)

The Petitioner, by counsel, respectfully requests this Court to issue a Writ of Habeas Corpus. In support of the Petition, the Petitioner states the following:

1. This Petition is made and writ applied for on behalf of [insert Petitioner's name], who is unlawfully restrained of his/her liberty and falsely imprisoned in [insert facility] at [insert location, including county] by Respondent(s) herein in his/her/their capacity as [sheriff or DOC official].

2. To the best of Petitioner's knowledge and belief, he/she is being held in said facility on the alleged grounds that [supply reason, like commitment, detainer, etc. - give cause number and identifying information if possible].

3. The detention is illegal in that [specify reason detention is illegal, i.e., invalid commitment, violation constitutional rights, etc.].

4. No previous application has been made for this Writ or the relief sought.

5. The Petitioner is entitled to immediate release from the unlawful detention.

WHEREFORE, the Petitioner, by counsel, respectfully requests the following relief:

A. A Writ of Habeas Corpus be issued and that an early date for a hearing on the return of the Writ be set;

B. Immediately after the hearing on the return, Petitioner be discharged from the custody of the Respondent(s); and

C. All other relief as the Court may deem just and proper under the circumstances.

(Signature of Attorney)

I (we) affirm, under the penalties for perjury, that the foregoing representations are true to the best of my (our) knowledge and belief.

(Signature of Petitioner)

REFERENCES

CASEBANK Q.1

I.C. 34-25.5-1 et seq. (procedures for habeas corpus)

I.C. 34-25.5-1-1 (“every person whose liberty is restrained, under any pretense whatsoever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint and shall be delivered from the restraint if the restraint is illegal”).

I.C. 34-25.5-2-2 (Writs of habeas corpus must be granted by the circuit or superior courts of the county in which the person applying for the writ is restrained).

Indiana Constitution, Article I, §27

CASE LAW

Van Meter v. Heath, 602 N.E.2d 143 (Ind. 1992) (issues relating to validity of commitment which is not invalid on its face must be raised through appeal or post-conviction relief, and not habeas corpus).

Miller v. Lowrance, 629 N.E.2d 846 (Ind. 1994) (PCR 1(1) (c) states that if petitioner applies for a writ in a court having personal jurisdiction over him, attacking validity of conviction or sentence, that court is to transfer the cause to the court where petitioner was convicted or sentenced; courts in counties where prisons are located have no jurisdiction to examine or review final judgments, regular on their faces, issued by courts of competent jurisdiction). See also Wickliffe, 719 N.E.2d 822 (Ind.Ct.App. 1999).

Raines v. Madison County Superior Ct., 377 N.E.2d 1343 (Ind. 1978) (the trial court properly assumed jurisdiction and was under no duty to transfer cause to the court of conviction because Petitioner was not collaterally attacking his conviction or sentence but rather attacking actions of Parole Board in revoking his parole).

Hardley v. State, 893 N.E.2d 740 (Ind.Ct.App. 2008) (trial court abused its discretion in dismissing habeas petition rather than treating it as a petition for post-conviction relief; if a petitioner erroneously captions his action as petition for a writ of habeas corpus rather than post-conviction relief, courts will frequently and properly treat the petition as one for post-conviction relief, based on the content of the petition, rather than the caption).

Hendrix v. Duckworth, 442 N.E.2d 1058 (Ind. 1982) (no court has jurisdiction to entertain a habeas corpus petition unless such petition alleges that petitioning prisoner is entitled to immediate discharge).

Hobbs v. Lindsey, 162 N.E.2d 85 (Ind. 1959) (habeas corpus proceeding which was brought to procure reduction of bail to amount more consistent with both nature of embezzlement offenses with which accused was charged and his financial ability, burden was on State to show necessity or justification for unusual amount of bail required; denial of petition reversed).

State ex rel. Smith v. Marion Circuit Ct., 101 N.E.2d 272 (Ind. 1951) (a motion to be admitted to bail or petition for writ of habeas corpus for purpose of letting prisoner to bail must be filed, and question must be determined, in the Court in which the indictment is pending).

Knoche v. State, 607 N.E.2d 972 (Ind. 1993) (a habeas petition was used to challenge extradition to another State).