

**THE STATE EX REL. FOSTER, APPELLANT, v. BELMONT COUNTY COURT OF
COMMON PLEAS ET AL., APPELLEES.**

**[Cite as *State ex rel. Foster v. Belmont Cty. Court of Common Pleas*,
107 Ohio St.3d 195, 2005-Ohio-6184.]**

*Prohibition — Claim for release from prison cognizable in habeas corpus, not
prohibition — Failure to comply with R.C. 2969.25, governing civil
actions by prisoners — Dismissal of petition affirmed.*

(No. 2005-0768 — Submitted October 12, 2005 — Decided December 7, 2005.)

APPEAL from the Court of Appeals for Belmont County,

No. 04-BE-55, 2005-Ohio-1353.

Per Curiam.

{¶ 1} This is an appeal from a judgment dismissing a complaint for a writ of prohibition.

{¶ 2} In 1991, appellant, Kent C. Foster, was convicted of two counts of rape, one count of felonious sexual penetration, and one lesser included offense of gross sexual imposition and was sentenced to prison. On appeal, his conviction and sentence were affirmed. *State v. Foster* (Apr. 12, 1994), Belmont App. No. 91-B-17, 1994 WL 149881.

{¶ 3} In October 2004, Foster filed a complaint in the Court of Appeals for Belmont County for a writ of prohibition against appellees, Belmont County Court of Common Pleas, Belmont County Prosecuting Attorney’s Office, and the Ohio Department of Rehabilitation and Correction. Foster requested that the writ issue “to vacate his sentence and records as it is a legal nullity.” Although Foster filed an affidavit of indigency indicating that he could not pay the fee to file his original action, he did not file the statement required by R.C. 2969.25(C)(1)

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setting forth the balance in his inmate account “for each of the preceding six months, as certified by the institutional cashier.” Appellees moved to dismiss. On March 16, 2005, the court of appeals dismissed the complaint.

{¶ 4} This cause is now before us upon Foster’s appeal as of right.

{¶ 5} We affirm the judgment of the court of appeals. Foster essentially seeks release from prison, but habeas corpus, rather than prohibition, is the appropriate action to obtain this type of relief. *State ex rel. Nelson v. Griffin*, 103 Ohio St.3d 167, 2004-Ohio-4754, 814 N.E.2d 866, ¶ 5. In addition, Foster’s failure to comply with R.C. 2969.25(C)(1) warranted dismissal. *State ex rel. Qualls v. Story*, 104 Ohio St.3d 343, 2004-Ohio-6565, 819 N.E.2d 701, ¶ 3.

Judgment affirmed.

MOYER, C.J., RESNICK, PFEIFER, LUNDBERG STRATTON, O’CONNOR, O’DONNELL and LANZINGER, JJ., concur.

Kent C. Foster, pro se.

Christopher Berhalter, Belmont County Prosecuting Attorney, and Robert W. Quirk, Assistant Prosecuting Attorney, for appellees Belmont County Court of Common Pleas and Belmont County Prosecuting Attorney’s Office.

Jim Petro, Attorney General, and Jeri L. Fosnaught, Assistant Attorney General, for appellee Ohio Department of Rehabilitation and Correction.
