

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

SUPERIOR COURT

Charles Roy Miller)
)
 v.) No. 09-E-72
)
 Rick Van Wickler, Superintendent)

Ian Freeman _____)
)
 v.) No. 09-E-75
)
 Rick Van Wickler, Superintendent)

Julia Miranda _____)
)
 v.) No. 09-E-76
)
 Rick Van Wickler, Superintendent)

Dale Everett _____)
)
 v.) No. 09-E-77
)
 Rick Van Wickler, Superintendent)

Auburn Goodwin _____)
)
 v.) No. 09-E-78
)
 Rick Van Wickler, Superintendent)

Kurt Hoffman)
)
 v.) **No. 09-E-79**
)
 Rick Van Wickler, Superintendent)

Richard Onley _____)
)
 v.) **No. 09-E-80**
)
 Rick Van Wickler, Superintendent)

Keith Carlson _____)
)
 v.) **No. 09-E-81**
)
 Rick Van Wickler, Superintendent)

Deborah Kalinowski _____)
)
 v.) **No. 09-E-82**
)
 Rick Van Wickler, Superintendent)

**ORDER ON PETITION FOR WRIT OF HABEAS CORPUS
RE: JOHN SAM DOE**

The petitioners in the nine cases cited above filed for writs of habeas corpus on behalf of John Sam Doe, alleging he is confined unlawfully at the Cheshire County Jail. The petitions are virtually the same. They make identical arguments in identical language in, for the most part, identically numbered paragraphs.

The gist of each petition is that a Sergeant Rivera filed a criminal complaint against Doe. Incorporating concepts from civil litigation, the petitioners say that since the complaint fails to allege an injury to Rivera, he has no "standing" to bring the charge.¹ The petitioners contend further that there is no *corpus delicti*, which each petition defines as proof of "a loss or injury," "criminal causation of that loss or injury," and "the identity of the defendant as the perpetrator of the crime." The petitioners assert that the court has no jurisdiction if Rivera has no standing to bring the charge and there is no proof of a *corpus delicti*. They say the complaint should be dismissed and Doe released as a result.

Some of the petitions contain basic procedural defects – for instance, more than one omits an address for the person who filed it. See Superior Court Rule 119. The petitions also mistake Rivera for a plaintiff pursuing a civil claim, whereas criminal charges are brought in the name of the State. Nevertheless, I read the petitions to say that Doe is entitled to relief because the criminal complaint does not allege an offense and the evidence against Doe is insufficient to convict him.

The petitions allege that Doe is charged with a crime. He has not been tried and convicted. As a result, he will have an opportunity to challenge the adequacy of the charging document before trial and to contest the sufficiency of

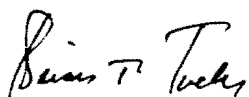
¹ The complaint is not included with the petition and the petition does not describe what the complaint alleges. For purposes of this order, however, I assume that what the petitioners say about the complaint is true.

the evidence against him at trial. The stage of the proceeding is significant because a writ of habeas corpus "usually will not issue when the proceedings under which the petitioner is detained are still pending undisposed of and the ordinary established procedure by trial and appeal is available." 39 C.J.S. *Habeas Corpus* § 14 (2008). See *In re Kerry D.*, 144 N.H. 146, 148 (1999) (writ of habeas corpus is "'reserved for those questions which involve fundamental procedures and occasions of pressing necessity *where other remedies are inadequate or ineffective.*" (quoting *Springer v. Hungerford*, 100 N.H. 503, 506 (1957) (emphasis added))).

Doe may make the same challenges the petitioners make on his behalf as the criminal case proceeds. Since Doe has an adequate remedy in the court in which the charge was brought, he is not entitled to habeas relief at this juncture. Accordingly, the petitions are dismissed.

SO ORDERED.

Date: May 6, 2009



Brian T. Tucker
Presiding Justice