

ORIGINAL

IN THE SUPREME COURT OF OHIO

09-1121

STATE OF OHIO ex rel.)
LAMBERT DEHLER,)

Relator-Appellant,)

-vs-)

BENNIE KELLY, WARDEN OF)
THE TRUMBULL CORRECTIONAL)
INSTITUTION,)

Respondent-Appellee.)

Case No. _____

On Appeal from the Trumbull
County Court of Appeals,
Eleventh Appellate District

Court of Appeals
Case No. 2008-T-0062

RECEIVED

JUN 18 2009

CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF APPELLANT LAMBERT DEHLER

Lambert Dehler, #273-819
Trumbull Correctional Institution
PO Box 901
Leavittsburg, OH 44430-0901

Counsel for Relator Appellant, *pro se*

FILED

JUN 18 2009

CLERK OF COURT
SUPREME COURT OF OHIO

Richard Cordray, Attorney General (0038034)
Ashley D. Rutherford, Assistant Attorney General (Counsel of Record) (0084009)
Corrections Litigation Section
150 East Gay Street, 16th Floor
Columbus, OH 43215

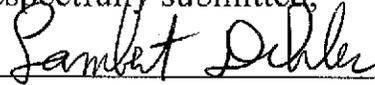
COUNSEL FOR RESPONDENT-APPELLEE,
BENNIE KELLY, WARDEN OF THE TRUMBULL
CORRECTIONAL INSTITUTION

Notice of Appeal of Relator-Appellant Lambert Dehler

Appellant Lambert Dehler hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Trumbull County Court of Appeals, Eleventh Appellate District, entered in Court of Appeals case No. **2008-T-0062** on June 1, 2009.

This case originated in the court of appeals and is a direct appeal as a matter of right.

Respectfully submitted,



Lambert Dehler, #273-819
Trumbull Correctional Institution
PO Box 901
Leavittsburg, OH 44430-0901
COUNSEL FOR APPELLANT, *PRO SE*

Certificate of Service

I certify that a copy of this Notice of Appeal, with the opinion and judgment entry from the court of appeals, and affidavit of grievance exhaustion, affidavit of prior civil actions or appeals pursuant to R.C. 2929.25 with cashier's statement, was sent by ordinary U.S. mail to counsel for appellee, Ashley D. Rutherford, Assistant Attorney General, at 150 East Gay Street, 16th Floor, Columbus, OH, 43215, on this 13th day of **June, 2009**.



Lambert Dehler, #273-819
COUNSEL FOR APPELLANT, *PRO SE*

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO

STATE OF OHIO ex rel.	:	PER CURIAM OPINION
LAMBERT DEHLER,	:	CASE NO. 2008-T-0062
Relator,	:	
- vs -	:	
BENNIE KELLY, WARDEN OF	:	
THE TRUMBULL CORRECTIONAL	:	
INSTITUTION,	:	
Respondent.	:	

FILED
COURT OF APPEALS
JUN 01 2009
TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

Original Action for Writ of Mandamus.

Judgment: Writ denied.

Lambert Dehler, pro se, PID: 273-819, Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, OH 44430-0901 (Relator).

Richard Cordray, Attorney General, and *Ashley D. Rutherford*, Assistant Attorney General, Corrections Litigation Section, 150 East Gay Street, 16th Floor, Columbus, OH 43215 (For Respondent).

PER CURIAM.

{¶1} This action in mandamus is presently before this court for final disposition of the summary judgment motion of respondent, Warden Bennie Kelly of the Trumbull Correctional Institution. As the sole basis for his motion, respondent maintains that the merits of the sole claim before us have become moot because a member of the prison staff has already performed the specific act which relator, Lambert Dehler, was seeking

to compel. For the following reasons, we conclude that the motion to dismiss is well-taken.

{¶2} During the entire pendency of the instant action, relator has been confined at the Trumbull Correctional Institution. In his petition for relief, relator asserted that, as the warden of the state prison, respondent had been failing to satisfy his statutory duty to provide adequate clothing to the inmates. Specifically, he alleged that the prison's quartermaster was not keeping an ample supply of various necessities, including pants and shirts. In regard to himself, relator asserted that, even though he had submitted an appropriate request, the quartermaster still had not given him a pair of properly-fitting shoes.

{¶3} After respondent had filed his answer to the mandamus petition, relator moved this court to stay the instant proceedings so that he could have the opportunity to pursue two grievances pertaining to the "clothing" issue. Pursuant to R.C. 2969.26(B), we granted the stay for a period of one hundred eighty days. At the conclusion of this time frame, relator filed a new submission in which he averred that, despite the fact that two written decisions had been issued concerning his grievances, the same problem still existed regarding the amount of clothing the quartermaster was keeping "in stock." In light of this, he requested that a permanent injunction be rendered against respondent as to this situation.

{¶4} In conjunction with his response to relator's request for additional relief, respondent has now moved for summary judgment on the entire mandamus claim. In essence, he contends that he is entitled to final judgment because his staff at the prison has already taken the necessary steps to remedy the underlying problem. In support of

this contention, respondent has attached to his motion the affidavit of Jacqueline Scott, who is the prison's business administrator. In this affidavit, Scott first avers that, as part of her duties, she oversees the work of the quartermaster. She further asserts that, in September 2008, the quartermaster gave relator a new pair of shoes in the size which he had previously requested.

{¶5} In responding to the motion for summary judgment, relator has not denied that, subsequent to the filing of this case, he received a pair of properly-fitting shoes. In addition, he has admitted that, even though there were certain delays in the process, he received other items of clothing which he had requested. Despite this, relator maintains that the instant action should still go forward because the quartermaster's procedure for the distribution of clothing remains flawed in two respects. First, he again contends that the prison does not keep a sufficient supply of clothing on hand to be able to meet the immediate needs of the inmates. Second, he argues that the prison does not have a system under which an inmate can place his name on a waiting list and be ensured that he will receive the requested item when the supplies are ultimately replenished. As to the latter point, relator states that the quartermaster does not post a notice indicating when new supplies have been delivered, and that it is merely a question of luck whether an inmate will submit a new request at a time when the items are in stock.

{¶6} In support of the foregoing two points, relator has attached to his response the affidavits of two fellow inmates, Russell Stokes and James Parks. Our review of the two affidavits shows that they do not delineate any information concerning the alleged problems relator has had in obtaining clothing. Instead, the affidavits only refer to the separate problems which Stokes and Parks have supposedly encountered in attempting

to deal with the quartermaster.

{¶7} In relation to Stokes and Parks, this court would note that they have never been named as parties to the instant matter. More importantly, we would also note that relator's mandamus petition did not contain any allegations indicating that he sought to maintain this case as a class action under Civ.R. 23. In considering a similar situation, the Supreme Court of Ohio has concluded that when a mandamus petition fails to set forth any of the basic allegations for a class action, the proceeding must be viewed as an "individual" action for the benefit of the named relator only. See *State ex rel. Ogan v. Teater* (1978), 54 Ohio St.3d 235, 247. In other words, unless a mandamus case has been brought as a class action, mandamus relief cannot be granted to any other person except the named relator.

{¶8} In light of the *Ogan* precedent, the alleged "clothing" problems of Stokes and Parks cannot be resolved in the context of the instant proceeding. That is, because the allegations in the instant petition are limited to relator, only his alleged problems in obtaining proper clothing are before us for resolution. Moreover, since the allegations in the affidavits of Stokes and Parks pertain solely to their respective "clothing" problems, they are irrelevant for purposes of this litigation.

{¶9} As to relator, the averments in his separate affidavit essentially confirm the basic assertions in respondent's summary judgment motion; i.e., at this time, relator has received all of the clothing items which he requested from the prison quartermaster. In fact, there is no factual dispute that relator was given a pair of properly-fitting shoes shortly after the commencement of this action. Accordingly, even if relator could show that respondent is generally failing to satisfy his statutory duty under R.C. 2921.44(C) to

provide adequate clothing to the prison population, such a finding would not be directly beneficial to him because he has already obtained the exact remedy which he sought in maintaining this action. To this extent, the final merits of relator's mandamus claim are now moot.

{¶10} As this court has noted on numerous occasions, a writ of mandamus is generally employed as a means of requiring a public official to complete an act which he is legally obligated to perform. See, e.g., *Penko v. Mitrovich*, 11th Dist. No. 2003-L-191, 2004-Ohio-6326, at ¶5. As a result, if the public official actually performs the desired act before the final merits of the mandamus claim are addressed, the case itself will be considered moot and should not go forward. *Cunningham v. Lucci*, 11th Dist. No. 2006-L-052, 2006-Ohio-4666, at ¶9. Pursuant to this legal precedent, respondent is entitled to prevail in the instant matter because the employees under his control have already given relator the specific clothing items he sought to obtain.

{¶11} As a final point, this court would again note that, as part of his submissions in this action, relator also requested the issuance of a permanent injunction against respondent and his staff. Even if the merits of this action had not become moot, we would not be able to grant that form of relief because the original jurisdiction of an appellate court does not include a claim for a permanent injunction. *Blackwell v. Bd. of Twp. Trustees, Ashtabula Twp.*, 11th Dist. No. 2003-A-0061, 2004-Ohio-2080, at ¶5.

{¶12} "Under Civ.R. 56(C), the moving party in a summary judgment exercise is entitled to prevail when he can establish that: (1) there are no genuine factual disputes remaining to be litigated; (2) he is entitled to judgment as a matter of law; (3) the evidentiary materials are such that, even when those materials are interpreted in a way

which is most favorable to the non-moving party, a reasonable person could only come to a conclusion adverse to the non-moving party." *Sper v. Gansheimer*, 11th Dist. No. 2003-A-0124, 2004-Ohio-2443, at ¶7. In applying the foregoing standard to the parties' respective evidentiary materials, this court concludes that the granting of summary judgment is warranted as to relator's sole mandamus claim. Specifically, respondent has demonstrated that, pursuant to the undisputed facts, he is entitled to prevail as a matter of law because the merits of the underlying "clothing" dispute have already been resolved and, accordingly, are moot.

{¶13} Consistent with the foregoing discussion, respondent's motion for summary judgment is granted. It is the order of this court that the writ of mandamus is denied, and final judgment is hereby entered in favor of respondent in regard to relator's entire mandamus claim.

MARY JANE TRAPP, P.J., DIANE V. GRENDALL, J., COLLEEN MARY O'TOOLE, J.,
concur.

STATE OF OHIO
COUNTY OF TRUMBULL

)
)SS.
)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

STATE OF OHIO ex rel.
LAMBERT DEHLER,

Relator,

- vs -

JUDGMENT ENTRY

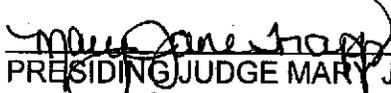
CASE NO. 2008-T-0062

BENNIE KELLY, WARDEN OF
THE TRUMBULL CORRECTIONAL
INSTITUTION,

Respondent.

For the reason stated in the Per Curiam Opinion of this court, respondent's motion for summary judgment is granted. It is the order of this court that the writ of mandamus is denied, and final judgment is hereby entered in favor of respondent as to relator's entire mandamus claim.

Pursuant to this judgment entry, all other pending motions are hereby overruled as moot.



PRESIDING JUDGE MARY JANE TRAPP



JUDGE DIANE V. GREDELL



JUDGE COLLEEN MARY O'TOOLE

FILED
COURT OF APPEALS

JUN 01 2009

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

Attachment not scanned

Exhibit D

STATE OF OHIO)
)
Trumbull COUNTY)
state of Ohio ex rel.
Lambert Dehler
Petitioner,

**IN FORMA PAUPERIS
AFFIDAVIT OF INDIGENCE
DECLARATION IN SUPPORT
PURSUANT TO R.C. §2965.25**

-VS-

Terry Collins, et.al.
Respondant.

(CASHIER'S OFFICE ONLY)

1.) My financial status for the past six months is:

(Cashier, please only total credits to account)

(mm/yy) 37.00 \$ 11/1/2008 (mm/yy) 52.00 \$ 1/2009 (mm/yy) 3/2009 \$ 37.00
(mm/yy) 142.00 \$ 12/2008 (mm/yy) 52.00 \$ 2/2009 (mm/yy) 4/2009 \$ 27.00

Total "State Pay" for six month period is \$ 102.00. Total funds from other sources is \$ 245.00. My current balance is \$ 10.24. Average Monthly balance is \$ 57.83.

[Signature]
Cashier's Signature

AFFIANT'S STATEMENT

2.) I do not have the adequate funds, real property, stocks, bonds nor the savings to pay for the costs of this action.

I, Lambert Dehler, do solemnly swear that the statements contained herein are true to the best of my knowledge and belief.

Lambert Dehler
Lambert Dehler # 273-819
Affiant, pro se

Sworn to and subscribed before me this 8th day of May, 2009.

Jacalyn A. McCullough
Notary Public
JACALYN A McCULLOUGH
Notary Public - State of Ohio
My Commission Expires Feb. 11, 2013

Exhibit E

**AFFIDAVIT OF GRIEVANCE REMEDIES PURSUANT TO
R.C. 2969.26(A)**

(STATE OF OHIO)
)
(TRUMBULL CO.)

SS:

I, Lambert Dehler, after being first duly cautioned and sworn to my oath, deposes and say that the following statements are true and correct to the best of my knowledge, that I am aware of the penalties for perjury:

- 1) I am competent to testify in a court of law.
- 2) The grievance system is fully exhausted. On June 11, 2008, I sent a letter of complaint to the Respondent. See, **Exhibit F**.
3. The warden did not timely reply, so I filed a Grievance against the Respondent to the Office of the Chief Inspector: Case No. **CI-08-08-000038**. It was denied on December 1, 2008. See, **Exhibit G**.
4. On June 16, 2008, I filed a "Notification of Grievance" to the Inspector at my prison: Case No. **TCI-07-08-000001**. See, **Exhibit H**.
5. On July 7, 2008, the Inspector at my prison denied the grievance: Case No. **TCI-07-08-000001**. See, **Exhibit I**.
6. On October 1, 2008, the Chief Inspector affirmed the prison inspector. Case No. **TCI-07-08-000001**. See, **Exhibit J**.
- 7) Further Affiant Sayeth Naught.

Lambert Dehler

RELATOR

Sworn to the above and subscribed before me, a duly commissioned Notary Public, on this 12 day of **June, 2009**.

(SEAL)



BEVERLY REGHETTI
Notary Public
In and for the State of Ohio
My Commission Expires
Sept. 11, 2012

Beverly Reghetti
Notary signature)

Lambert Dehler, #273-819
12 East - 231(B)
T.C.I.

June 11, 2008

Dear Warden Bennie Kelly:

There has been a problem of severe clothing shortages at the Quartermaster for quite some time. On 6/5/08, I went to Quartermaster and they had no shoes to fit me. Enclosed is a copy of the Informal Complaint Resolution sent to the T.C.I. Business Office. Do you know when I may expect to obtain some state shoes that fit me?

Notice of Law

The Ohio Supreme Court told the T.C.I. Warden on 8/24/1994, that a prisoner adequately stated a claim that T.C.I. failed to provide prisoners with adequate clothing. The prison warden has a statutory duty to provide inmates with adequate clothing. See, *State ex rel. Carter v. Schotten* (Ohio, 8/24/94), 70 Ohio St.3d 89, 637 NE 2d 306, 1994-Ohio-37.


Lambert Dehler, #273-819

(Case# CT-08-08-000038)

Decision of the Chief Inspector on a Grievance

Inmate: <p style="text-align: center;">DEHLER, LAMBERT F</p>	Institution: <p style="text-align: center;">TCI</p>
Number: <p style="text-align: center;">A273819</p>	Grievance No.: <p style="text-align: center;">CI-08-08-000038</p>
Date: <p style="text-align: center;">12/01/2008</p>	

The office of the Chief Inspector is in receipt of your Notification of Grievance against
 _____ at the _____
 Warden Kelly Trumbull Correctional Institution
(Name of Warden or Inspector) *(Name of Institution)*

In your complaint you state that you have been waiting since December 2007 for a pair of shoes that fit you. You state that you wear a standard D width and the Quartermaster does not have this size. You cite various issues with your feet that are caused by improper shoes.

Upon my review, I find that Administrative Rule 5120-9-31 Inmate Grievance Procedure states in part that

If the inmate is dissatisfied with the disposition of grievance, the inmate may request an appeal form from the inspector of institutional services. The appeal must then be filed to the office of the chief inspector within fourteen calendar days of the date of the disposition of grievance.

I find that you filed grievance #TCI-07-08-000001 regarding this issue on 6/20/08. Inspector Frederick investigated grievance #TCI-07-08-000001 and issued a disposition to this grievance on 7/7/08. You were not satisfied with the disposition that Inspector Frederick issued in grievance #TCI-07-08-000001, and you appealed the disposition to this office at that time.

I further find that Assistant Chief Inspector, Coble, reviewed your appeal of the disposition of grievance #TCI-07-08-000001 and rendered a decision on your appeal on 10/1/08.

With respect to grievance appeals submitted to this office, I find that Administrative Rule 5120-9-31, Inmate Grievance Procedure, states in part that

The decision of the chief inspector or designee is final.

Filing a grievance directly with this office against the warden on the same issues will not serve as an additional means of grieving or appealing.

Administrative Rule 5120-9-31, Inmate Grievance Procedure, states in part that grievances in which the Warden or Inspector of Institutional Services has been made a party must show that the Warden or Inspector of Institutional Services was personally and knowingly involved in a violation of law, rule, or policy and approved it or did nothing to prevent it. You have failed to clearly show where Warden Kelly was personally and knowingly involved in a violation of law, rule, or policy and approved it or did nothing to prevent it.

Accordingly this grievance is DENIED. This office will take no further action on this matter at this time.

Signature:	Title: <p style="text-align: center;">CHIEF INSPECTOR</p>
------------	--

rec'd 12-4-08

Deliver 2/13/99

NOTIFICATION OF GRIEVANCE

Name	DEHART, Raymond	Incident #	199801140001
Number	273018	Grievance No. (only if filed by Inspector's Office)	0904-07-08-000011
Posting as of date	2/13/99	Date	6/18/98

A. Explain your complaint, the Subject's Address, and the incident or concern. Include what would solve your complaint.

I was put through a series of tests of standing and had a long first morning shift. I felt very tired and uncomfortable, including some dizziness. I don't believe that...

On 2/13/99, I was told by my supervisor that I was given that he has a standing duty to provide uniforms to all men clothing. As far as the extra shoes they issued to me a few months ago do not fit and they hurt my feet. I have to go to work every day. I go to K-Mart or somewhere and get us some pairs of shoes to wear. See, State ex rel. Carter v. Schmitt, (1/24/94), 70 Ohio St.3d 89, 637 N.E.2d 308, 1994 Ohio 37.

B. If you experience a substantial loss of PHYSICAL ENDURANCE, please file a complaint addressed to the following: STATE OF OHIO, DEPT. OF PUBLIC SAFETY, DC No. _____

C. If you have a complaint regarding your WORKING CONDITIONS, please file a complaint addressed to the following: STATE OF OHIO, DEPT. OF PUBLIC SAFETY, DC No. _____

D. If you have a complaint regarding your RECORDATION, please file a complaint addressed to the following: STATE OF OHIO, DEPT. OF PUBLIC SAFETY, DC No. _____

Date of Signature: 2/13/99

DISPOSITION OF GRIEVANCE

INMATE: DEHLER, LAMBERT F **COMPLAINT CODE:** INSTITUTIONAL OPERATIONS - Laundry /
 Quartermaster (State clothing /bedding) - Denied
 item

NUMBER: A273819 **DISPOSITION:** DENIED - Staff action was a valid exercise of
 discretion

INSTITUTION: TCI **GRIEVANCE NUMBER:** TCI-07-08-000001

DATE: 07/07/2008

The disposition of this grievance will be delayed longer than 14 calendar days for the following reason(s):

Your grievance, filed on 06/20/2008, has been reviewed and disposed of as follows:

This office is in receipt of Notification of Grievance #TCI-07-08-000001 submitted by inmate Dehler #273-819. This office did feel it was necessary to solicit opinions from employees concerning your grievance.

In your complaint you state the quartermaster is out of clothing there is a list of items posted. You feel the institution should go to the store and purchase said item due to the institution being required to provide.

During my investigation of your complaint spoke with Ms. Scott, Business Administrator III.

You are correct the quarter master is out of numerous items and they posted. After speaking with Ms. Scott this office was assured that the items were ordered.

Staff action was a valid exercise of discretion.

Therefore this complaint is DENIED and this office will take no further action.

If you wish, you may appeal this decision to the Chief Inspector within 14 calendar days. Appeal forms are available in the office of the Inspector of Institutional Services.

K Kendrick

Decision of the Chief Inspector on a Grievance Appeal

Inmate:	DEHLER, LAMBERT F	Institution:	TCI
Number:	A273819	Grievance No.:	TCI-07-08-000001
Date:	10/01/2008		

The office of the Chief Inspector is in receipt of your notification of grievance, the disposition of that grievance, and your appeal to this office. A review of your appeal has been completed. The decision of the Inspector is hereby

Affirmed

Affirmed.

You complain the Quartermaster does not have adequate amounts of clothing and shoes. You state the institution issued shoes you received do not fit and you have not been able to get another pair. The Quartermaster has ordered additionally clothing to include shoes. This should resolve this issue. As such, I find the Inspector has appropriately responded to your complaint.

Signature: 	Title: ASSISTANT CHIEF INSPECTOR
--	----------------------------------

rec'd 10-3-08

AFFIDAVIT OF PRIOR ACTIONS PURSUANT TO
R.C. 2969.25(A)

(STATE OF OHIO)
)
(TRUMBULL CO.)

SS:

I, Lambert Dehler, after being first duly cautioned and sworn to my oath, deposes and say that the following statements are true and correct to the best of my knowledge, that I am aware of the penalties for perjury:

1) I am competent to testify in a court of law.

2) The following is a complete list of all cases that I have filed in state and federal courts in the past five years, and I have never had a case dismissed as frivolous or malicious:

A. Appeal of new registration requirements under the Adam Walsh Act (R.C.2950.032) in the case entitled: *State of Ohio v. Lambert Dehler, Case No. 2008-TR-61*, which is still pending a decision in the Eleventh District Court of Appeals;

B. Original Petition for a Writ of Mandamus filed in the appellate court in Trumbull County, seeking an order requiring the Warden at Trumbull Correctional Institution to provide adequate clothing under state law in the case entitled: *State of Ohio ex rel. Lambert Dehler, Relator, v. Bennie Kelly, Warden, Respondent, Case No. 2008-TR-62*, which is the subject of the instant appeal and was decided in the Eleventh District Court of Appeals; the Opinion dismissing this case was filed on June 1, 2009;

C. Original Petition for a Writ of Mandamus filed in the Tenth Appellate Court for Franklin County Ohio, seeking an order requiring the Chief Inspector of the Department of Rehabilitation and Corrections; and also the Institutional Inspector of Trumbull Correctional Institution to answer languishing grievances under state law in the case entitled: *State of Ohio ex rel. Lambert Dehler, Relator, v. Gary Croft (DRC) and Kim Frederick (TCI), Respondents, Case No. 09-AP-535*. It was filed on June 1, 2009 and the Respondents have not answered the Complaint as of today's Notary Date.

3) Further Affiant Sayeth Naught.

Lambert Dehler
RELATOR

Sworn to the above and subscribed before me, a duly commissioned Notary Public, on this

12 day of June, 2009.

(SEAL)



BEVERLY REGHETTI
Notary Public
In and for the State of Ohio
My Commission Expires
Sept. 11, 2012

Beverly Reghetti
(Notary signature)