

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, EX REL.	:	
LAMBERT DEHLER,	:	
	:	
Relator-Appellant,	:	Case No. 2009-1121
	:	
vs.	:	
	:	On Appeal from the Eleventh District
BENNIE KELLY, WARDEN	:	Court of Appeals, Trumbull County
OF THE TRUMBULL	:	Case No. 2008-T-0062
CORRECTIONAL INSTITUTION	:	
	:	
Respondent-Appellee.	:	

APPELLEE'S BRIEF IN OPPOSITION

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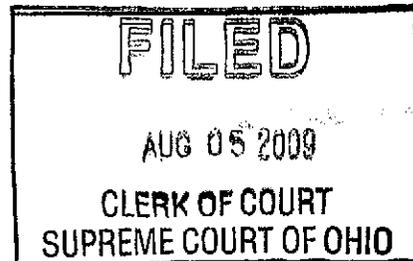


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APPELLANT'S PROPOSITIONS OF LAW

1. If a public official actually performs the desired act sought in a petition for a writ of mandamus before the final merits of the mandamus claim are addressed, the case itself will not be considered moot if the claim is capable of repetition, yet evading review.
2. The original jurisdiction of an appellate court does not preclude a claim for a permanent injunction.

APPELLEE'S RESPONSES TO APPELLANT'S PROPOSITIONS OF LAW

1. The Eleventh District Court of Appeals properly dismissed Relator-Appellant Lambert Dehler's Petition for Writ of Mandamus as being moot, since Appellant Dehler received his requested relief, properly-fitting state issued shoes.
2. Appellant Dehler's Petition for Writ of Mandamus was not a class action, and therefore all evidence regarding other inmates' problems in obtaining clothing are irrelevant.

I. INTRODUCTION

The Eleventh District Court of Appeals properly dismissed Relator-Appellant Lambert Dehler's Petition for Writ of Mandamus. Dehler does not have a legal right to the relief prayed for, as Dehler received his requested relief, a pair of properly-fitting state issued shoes. Dehler's Petition for Mandamus relief is therefore moot. Additionally, Dehler's argument that other inmates are having difficulty receiving their requested state issued clothing is irrelevant. His mandamus petition does not contain any allegations indicating that Dehler was attempting to file a class action under Ohio Civ. R. 23. Therefore, it is an "individual" mandamus action that would not provide relief to any person other than Inmate Dehler. As such, this Court should affirm the Eleventh District Court of Appeal's decision.

II. STATEMENT OF THE CASE AND FACTS

Appellant Lambert Dehler's Petition for Writ of Mandamus is moot, because Dehler received his requested relief. Dehler is incarcerated within the Ohio Department of Rehabilitation and Correction and an inmate at Trumbull Correctional Institution. He filed his Petition for Writ of Mandamus against Bennie Kelly, Warden of Trumbull Correctional Institution, requesting properly-fitting state issued shoes.

Respondent-Appellee, Bennie Kelly filed his answer to the mandamus petition, and Dehler moved the Court of Appeals to stay the proceedings so that he could have the opportunity to properly exhaust the grievance process. The Court of Appeals granted Inmate Dehler's request. At the conclusion of the stay, Dehler filed a new submission in which he claimed that, despite the two written decisions that had been issued concerning his grievances, the quartermaster at Trumbull Correctional Institution was still not keeping inmate clothing "in stock". Dehler also requested a permanent injunction to be rendered against Warden Kelly.

Warden Kelly then moved for summary judgment on the entire mandamus claim, establishing through an affidavit by Jaqueline Scott, the prison business administrator, that although Dehler was claiming that he had never received his shoes, Dehler had actually been issued a new pair of shoes in his size in September 2008. Dehler responded to Kelly's Motion for Summary Judgment, and specifically admitted to having receiving a pair of properly-fitting shoes. Additionally, Dehler admitted that, although there were certain delays in the process, Dehler received the other items he had requested. The Court of Appeals granted Kelly's Motion for Summary Judgment.

In granting Kelly's Motion for Summary Judgment, the Court noted in its opinion, that Dehler's Petition for Writ of Mandamus did not contain any allegations indicating that he sought to maintain a class action under Ohio Civ. R. 23. Because Dehler readily admitted to receiving all of his requested clothing from the prison quartermaster, no factual dispute remained. (*See Relator's Response to Respondent's Motion for Summary Judgment*).

Dehler has now appealed arguing that his Petition is not moot, since the problem is capable of repetition, yet evading review. As discussed below, this argument is meritless; Dehler has failed to provide this Court with sufficient evidence to support this contention. Consequently, this Court should affirm the Court of Appeals' decision.

III. STANDARD OF REVIEW

In order to grant a writ of mandamus, a court must find that the relator has a clear legal right to the relief prayed for, that the respondent is under a clear legal duty to perform the requested act, and that the relator has no plain and adequate remedy at law. *State ex rel. Evans v. Indus. Comm.* (1992), 64 Ohio St.3d 236, 238. A failure to show any one of these prerequisites requires the court to deny the petition or complaint. *State ex rel. Karmasu v. Tate* (1992), 83 Ohio App.3d 199. A writ of mandamus will not issue to compel an act already

performed. *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas* (1996), 74 Ohio St. 3d 278, 279. Here, Inmate Dehler has admitted that he received the relief he requested, leaving no genuine issue of material fact requiring litigation.

IV. ARGUMENT

A. The Eleventh District Court of Appeals properly dismissed Relator-Appellant Lambert Dehler's Petition for Writ of Mandamus as being moot, since Appellant Dehler received his requested relief, properly-fitting state issued shoes.

Inmate Lambert Dehler's claim is moot. Dehler admitted to receiving properly-fitting shoes as demanded in his Petition for Writ of Mandamus. He also admitted to receiving all of the other clothing items that he requested from the quartermaster. Therefore, this Court should uphold the Court of Appeals' decision.

In determining whether a case is moot,

"[t]he duty of this court, as of every judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. * * *"

State ex. rel. Eliza Jennings Inc., v. Noble (1990), 49 Ohio St. 3d 71, 74. An action in mandamus can be dismissed as moot when the respondent has already completed the specific act which is subject to the relator's petition. See *State ex rel. Kirk v. Burcham* (1998), 82 Ohio St. 3d 407, 408.

Dehler's claim is moot and therefore was appropriately dismissed. As the record indicates, Dehler has admitted that he received his properly-fitting shoes and all other clothing he requested.

Furthermore, Dehler's assertion that his petition is not moot, since it is capable of repetition yet evading review is without merit. "This exception [to the mootness doctrine] applies when the challenged action is too short in duration to be fully litigated before its cessation or expiration, and there is a reasonable expectation that the same complaining party will be subject to the same action again." *State ex. rel. White v. Koch* (2002), 96 Ohio St. 3d 395, 398. *See also State ex rel. Dispatch Printing Co. v. Loudon* (2001), 91 Ohio St. 3d 61, 64. Dehler has provided this court with no evidence to suggest, let alone prove, that his claim satisfies either of these elements.

As stated in Jacqueline Scott's affidavit, Trumbull Correctional Institution orders clothing and other personal items to distribute to inmates several times each quarter. (*See* Respondent's Motion for Summary Judgment). Although the Quartermaster may be out-of-stock of certain items throughout the quarter, the items are ordered regularly and available to inmates. Second, because there are regular orders, there is not reasonable expectation to believe that Dehler could successfully bring this action again. Dehler will always receive his state issued clothes when he goes to the quartermaster after a shipment has arrived. Thus, Dehler's assertion is ineffective and his claim is moot.

Consequently, Dehler's second proposition of law, that the original jurisdiction of an appellate court does not preclude a claim for a permanent injunction, is irrelevant. Since Dehler's claim is moot, he has no right to a permanent injunction. Furthermore, even if Dehler's claim was not moot, the Eleventh District Court of Appeals' original jurisdiction does not include a clam for a permanent injunction. *See Blackwell v. Bd. of Twp. Trustees,*

Ashtabula Twp., 11th Dist. No. 2003-A-0061, 2004-Ohio-2080 at ¶5. Therefore, this Court should affirm the Eleventh District Court of Appeal's decision.

B. Appellant Dehler's Petition for Writ of Mandamus was not a class action, and therefore all evidence regarding other inmates' problems in obtaining clothing are irrelevant.

Dehler's claim that other inmates are having difficulties obtaining clothing is irrelevant to this litigation. Dehler's Petition for Writ of Mandamus is not a class action pursuant to Civ. R. 23.

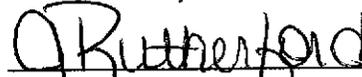
In a similar action, this Court has already concluded that when a mandamus petition fails to set forth any basic allegations for a class action, the proceeding must be viewed as an "individual" action for the benefit of the named relator only. *See State ex. rel. Ogan v. Teater* (1978), 54 Ohio St.3d 235, 247. Thus mandamus relief cannot be granted to any other person beyond the relator. As such, the other inmates alleged problems in obtaining state issued clothing are irrelevant with regards to this litigation. Therefore, summary judgment was appropriate.

V. CONCLUSION

For all of the foregoing reasons, Appellee Bennie Kelly, Warden of Trumbull Correctional Institution, requests that this Court affirm the Eleventh District Court of Appeals' dismissal of Appellant Lambert Dehler's Petition for Writ of Mandamus.

Respectfully submitted,

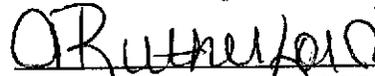
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V. CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing **APPELLEE'S BRIEF IN OPPOSITION** was mailed to Relator, Lambert Dehler, #273-819, Trumbull Correctional Institution, P.O. Box 901 Leavittsburg, OH 44430-0901 on August 5, 2009.



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